

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29622
Docket No. MW-28963
93-3-89-3-377

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employees
(CSX Transportation, Inc. (former
(Atlanta and West Point Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) Beginning on January 4, 1988, the Carrier violated the Agreement when it assigned four (4) mechanics represented by the International Association of Machinists (IAM) to perform mechanical repair and maintenance work on machinery assigned to Surfacing Force 5M89 working on the A&WP-WofA Subdivision on the A&WP-WofA-GA.-AJT Seniority District [System File 37-AWP-GA-88-13/12 (88-636) AWP].

(2) As a result of the violation referred to in Part (1) hereof, Claimants Messrs. A. C. Cleveland, T. M. Stephens and J. E. Taylor shall receive an equal proportionate share of the straight time and overtime hours worked by the IAM mechanics beginning on January 4, 1988 and continuing thereafter."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In this dispute, the International Association of Machinists

was recognized as a third party at interest, and that Organization filed a submission with the Board.

The Claim of the Brotherhood of Maintenance of Way Employees is fully encompassed in its Submission as follows:

"Beginning on January 4, 1988, the Carrier required mechanical repair and maintenance work to be performed on machinery assigned to Maintenance of Way Department Surfacing Force SM89 while it was working between Mile Post 0.0 and Mile Post 173 on the [Atlanta and West Point Railroad Company] property. Instead of assigning the Claimants to perform this work, the Carrier assigned four (4) mechanics . . . represented by the International Association of Machinists and Aerospace Workers (IAM) who hold no seniority whatsoever under the BMWWE Agreement. In fact, said IAM mechanics hold no seniority under any agreement in effect on the A&WP. Their seniority was established under Agreements between the IAM and other CSX properties (L&N, B&O, C&O, etc.) The IAM mechanics expended eight (8) hours each regular work day and significant amounts of overtime performing the above described repair and maintenance work."

The Claim listed dates and specific hours for work allegedly performed by the IAM employees. According to the Carrier, the work was performed on Plasser Continuous Action Tamper Machines.

The Board finds ample merit in the Organization's contention that the work belongs to its employees and that there is no contractual basis for assigning the work to IAM employees under applicable A&WP Agreements.

The principal issues involved is the amount of work actually involved and the Carrier's contention that no monetary remedy is appropriate since the Claimants were otherwise on duty. As to the latter point, there are certain situations where the working status of claimants may be a bar to monetary remedy. Here, however, the Board does not find this to be so, given the assignment of work to employees not contractually entitled to the work. Numerous previous Awards, some of which are cited by the Organization, support this view.

As to the amount of time involved, the record shows that the Carrier was provided full opportunity to dispute the specific number of hours listed in the Claim. The Board notes that the Carrier contends that one or more of the IAM employees served only

as "observers" to the work, although no proof of this was demonstrated.

As to remedy, the Board directs that the Carrier shall have the opportunity to promptly provide payroll information demonstrating to the Organization's satisfaction the specific number of hours involved in actual performance of the work, which shall then be awarded to the Claimants. Failing this, the Claim will be sustained as presented.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of April 1993.