

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30155
Docket No. MW-28246
94-3-87-3-824

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when, on April 8, 9, 13, and 14, 1986, the Carrier assigned Roadmaster Radloff to perform ballast unloading and distribution work on Section 363 at Kramer instead of calling and using Sectionman T. W. Johnson (System File R269 #0019J/800-46-B-252).
2. Furloughed Sectionman T. W. Johnson shall:

'...be made whole for all straight time and overtime lost as a result of the above violation and shall have all vacation, fringe benefits and other rights restored.'"

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

Claimant is the senior furloughed Sectionman from Crew 363 at Kramer. The Organization asserts that on the dates set forth in the Claim, a Roadmaster, an individual not covered by the Agreement, performed the work of opening and closing ballast car doors and all other Section Laborer's work incidental to ballast distribution in a gravel dumping project on the territory covered by Crew 363. According to the Organization, the Roadmaster took a Sectionman with him to operate the ballast spreader and the Roadmaster performed all of the remainder of the Laborer's work.

In response, the Carrier asserts that the unloading of ballast is not exclusive to the covered employees; supervisors have, at times, performed that function; and in this case the unloading of ballast was sporadic in nature and did not necessitate the recall of a furloughed Sectionman to assist. The Organization requested the payroll records of the Roadmaster and Sectionman which the Carrier declined to produce.

The burden is on the Organization to prove the facts supporting its assertions. Had the Organization shown through uncontested facts such as from a statement from the Sectionman who was present with the Roadmaster that he did the amount of work alleged by the Organization (i.e., that, as alleged in the Organization's December 16, 1986, letter, that "Radloff did not help... he performed all the work of ballast unloading except operating the spreader plow..."), we would sustain the Claim. Under those circumstances, it would have been demonstrated that the Roadmaster was performing work that was to be performed by the covered employees. But, this record does not contain such factual demonstrations. The record contains assertions not based upon fact but based upon essentially unsupported allegations which are contested by the Carrier.

The Organization's request for the payroll records of the Roadmaster and the Sectionman and the Carrier's refusal to disclose the same does not change the quality of the evidence before us. Those records perhaps would show when the work was allegedly performed. However, it has not been shown that those records would demonstrate specifically what work was done by the Roadmaster. This Board has the authority to draw certain inferences adverse to a party who refuses to disclose relevant information upon request. However, in this case it has not been shown that the undisclosed records would have specifically demonstrated that the Roadmaster actually performed the work to the degree alleged by the Organization.

As the Carrier points out, given the lack of evidence the record is therefore in conflict. Because the burden is ultimately on the Organization, we find that burden has not been met. Without more in the nature of facts to support the assertions made by the Organization, the conflict demonstrated by this record requires that we deny the Claim.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 26th day of April 1994.