

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30161
Docket No. MW-29980
94-3-91-3-371

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
(
(CSX Transportation, Inc. (former Chesapeake
(and Ohio Railway Company)

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

1. The Carrier violated the Agreement when, on April 9 and 10, 1990, it assigned various supervisors, employees from other crafts and three (3) Maintenance of Way employees with seniority in another district to perform Maintenance of Way cleaning of debris and painting work at Rougemere Yard on the Detroit Division [System File C-TC-7002/12(90-600) CON].
2. As a consequence of the violation above, furloughed Trackmen R. Crawford, R. Ramirez, L. Shirkey and P. Siwik shall each receive sixteen (16) hours' pay at the trackman's straight time rate and Painters R. Terpening, W. Larr, D. Hendrickson, K. Hopkins, A. Combs and R. Swiecicki shall each receive sixteen (16) hours' pay at the painter's straight time rate."

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.

This dispute is similar to the one discussed in Third Division Award 30160. In this case, the work performed by the Safety Committee (designated as "Spring Cleaning Teams") was at Rougemere Yard, Dearborn, Michigan and consisted of cleaning of debris and painting work on April 9 and 10, 1990. While maintenance of way employees participated in this work, a number of those participants were from different seniority districts than the one covering Rougemere Yard. Further, the work was also performed by employees from other crafts and from supervision.

For the same reasons discussed in Third Division Award 30160, the general work performed on the dates set forth in the claim falls within the purview of the governing Rule 59. As we further stated in that Award:

"No matter how important the Safety Committee's work may be, without a showing that an emergency existed and covered employees were not available or that the work performed by the Committee was of a de minimis nature, that Committee cannot undermine the rights of the employees established by the duly negotiated Agreement."

For those reasons and for the same reasons rejecting the Carrier's other arguments discussed in that Award, this claim must also be sustained. We also note that with respect to the Carrier's past practice argument, this record further reveals that the asserted practice is not well-established. Here, the Organization points out in its November 21, 1990 letter that "the Carrier has paid claims in the past regarding Safety Committee members performing Maintenance of Way work."

As in Third Division Award 30160, the amount of work actually performed in this case is also in dispute. Therefore, as we did in Third Division Award 30160, for a remedy:

"[I]n order to make Claimants whole for the lost work opportunity, we shall require Claimants to be compensated for a reasonable amount of time attributable to the Safety Committee's performance of the ... work on the date[s] set forth in the claim as determined by the parties."

A W A R D

Claim sustained in accordance with the Findings.

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By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

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