

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30222
Docket No. MW-29634
94-3-90-3-619

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 Seaboard
(System Railroad)

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

- (1) The Agreement was violated when the Carrier assigned Maintenance of Way General Subdepartment Group A employee Mr. B. E. Peace and Jacksonville-Tampa Seniority District Track Subdepartment employee Mr. R. W. Newberry instead of Florence-Savannah Seniority District Track Subdepartment employees L. T. Rutherford and D. W. Frick to perform track maintenance work of unloading ballast on the Spartanburg Subdivision of the Atlanta Division in the vicinity of Mile Post 544 between Waterloo and Laurens, South Carolina on Saturday, August 26, 1989, repairing a road crossing in Laurens, South Carolina on the Spartanburg Subdivision of the Atlanta Division on Sunday, August 27, 1989, and unloading ballast on the Spartanburg Subdivision of the Atlanta Division in the vicinity of Mile Post 542 on Monday, August 28, 1989 [System File 89-57/12(90-70) SSY].
- (2) As a consequence of the aforesaid violation, Messrs. L. T. Rutherford and D. W. Frick shall each be allowed eight (8) hours pay at their respective straight time rates and twenty-two (22) hours pay at their respective time and one-half rates for the work performed by Messrs. Peace and Newberry on August 26, 27, and 28, 1989."

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.

The dispute herein concerns work performed by two employees assigned to System Force 5X14 on August 26-28, 1989. This work was undertaken on the Spartanburg Subdivision of the Atlanta Division, a location where the Claimants hold District seniority. The work involved had no special system-wide significance and was, as the Carrier stated, "work that any Track Department employee is required to do from time to time." The Organization's view of the Claim is as follows:

"In this instance, although the employees assigned held system seniority . . . , that seniority clearly confined the work to which they were entitled to system force work they had customarily and traditionally performed. As we have hereinbefore shown, the routine track maintenance work of unloading ballast and repair of a road crossing was not such work. In other words, while the Carrier was free to assign Messrs. Peace and Newberry anywhere on the system, the work to which they were entitled was only that which had customarily and traditionally been assigned to and performed by system forces."

The Board is not faced here with the question of employees performing work in a seniority district where they have no seniority rights. Thus, no guidance is found in Third Division Award 22072, as cited by the Organization, and similar Awards concerned with seniority rights violations where the work is performed by an employee without seniority standing for the work and/or location. Here, it is conceded that System Force employees and Section Force employees both hold seniority at the involved location. The pertinent question is whether there is any contractual bar to the nature of the work performed by System Force employees, particularly here where it is done during the course of a regular work day.

The Organization argues that work, such as involved here, which is regularly performed by a Section Force cannot be assigned to a System Force. The Organization points to Rule 8 (c) covering the establishment of System forces and including the following:

"Positions to be worked on a System basis will be: namely, Pile Drivers, 2-1/2 Yard Shovel, Jordan Ditchers, Tandem Ditchers, Rail Oiler, Rail Handler, and Off-Track Grading gangs consisting of five (5) or more machines."

While the Organization argues that this listing provides a restriction as to the work which System Forces may be assigned, the Board is not convinced that the provision is intended to describe all the various duties (as contrasted with "positions") which System Forces may perform. In contrast to this, for example, are Third Division Awards 29356, 25053, 21064, and 13776 involving another Organization (Brotherhood of Railroad Signalman) and a similar situation in which there is a specific Rule for guidance. BRS Rule 51 (a) states:

"System gangs will be confined to construction work on new installations, except for necessary maintenance changes in connection with a construction project, and in emergency cases such as derailments, floods, snow blockades, fires and slides."

There is no comparable language in the Agreement applicable here.

The Organization notes that the Board "has consistently held that work within a specific seniority district must be reserved for employees holding seniority thereon." While the Board again endorses this finding here, it must be recognized that the issue here concerns two groups of employees both of which hold seniority at the point where the work was performed. Absent a contractually defined dividing line between the two groups as to their duties, the Board concludes there is no Rule violation in the assignment of the System Force employees to routine work as part of their regular workweek. This conclusion is limited to the fact circumstances herein; recognition must also be given to the obvious understanding that System Forces are primarily involved in specialized work different from that performed by Section Forces.

Form 1
Page 4

Award No. 30222
Docket No. MW-29634
94-3-90-3-619

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.