

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31081
Docket No. MW-30846
95-3-92-3-699

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former Baltimore
(and Ohio Railroad Company]

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

(1) The Carrier violated the Agreement when it assigned Trainmaster B. Wilkerson and two (2) other employees to perform Maintenance of Way work [remove approximately thirty (30) lockers from the Locust Point Yard Office, prepare them for painting and paint them] on June 5, 1991 and on June 6, 1991 Trainmaster Wilkerson and one (1) helper finished said work and returned said lockers back inside of the yard office [System File B-TC-8180/12 (91-1351) BOR].

(2) As a consequence of the violation referred to in Part (1) above, Claimants D. E. Beverly, S. N. Hardy, D. A. Kraft, M. L. Marshall and M. L. Hare shall each be compensated, at their respective rates of pay, for an equal proportionate share of the thirty-four (34) man-hours expended in the performance of the work described in Part 1."

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.

On June 5 and 6, 1991, four members of the Carrier's Safety First Committee were assigned to remove, strip, repaint, and relocate approximately 30 lockers from the Yard Office at Locust Point, Maryland. A total of 34 man-hours were expended to perform the work in question.

The Organization filed a claim contending that the work involved herein was customarily performed by B&B Carpenters. It argued that the Claimants were fully qualified, capable, willing and available to perform the above-mentioned work had the Carrier assigned them thereto.

The Carrier denied the claim arguing that the Claimants were "under pay and on duty in Carpenter Force 6D66, headquartered in Baltimore." The Carrier contended that the work involved was part of its "Operation Clean Sweep" and was performed by Safety Committeemen which includes employees of all crafts.

This Board reviewed the record in this case and we find that the Organization met its burden of proof that the Trainmaster and his subordinates performed work which is Maintenance of Way work as is set forth in the Scope Rule. That work which was alleged to be 34 man-hours was performed in violation of the Agreement. The work should have been performed by members of the Maintenance of Way Organization and the Carrier could have assigned the Claimants to perform that work. This Board rejects the Carrier's contention that the removal, surface preparation, painting and replacement of the lockers was work related to Operation Clean Sweep. The record reveals that even during the Operation Clean Sweep campaign, Claimants were assigned to perform all general maintenance work, such as the work that was performed in this case.

In reaching our Award, this Board relies on Third Division Awards 30160 and 30161. As this Board stated in Award 30160:

"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."

Finally, although the Carrier argues that "the Organization has failed to demonstrate that this work necessitated the time alleged," there was no evidence produced for the record by the Carrier to substantiate a lesser amount of time being spent by the Safety Committee on this work. Consequently, this Board must find that the 34 man-hours is the appropriate amount of relief to award the Claimants.

For all of the above reasons, the claim must be sustained.

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AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.