

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31230
Docket No. MW-30890
95-3-92-3-743

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
(
(Southern Pacific Transportation Company
((Eastern Lines)

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

- (1) The Agreement was violated, on July 13, 1991, when the Carrier assigned Union Pacific forces to perform track work in connection with the derailment on the North Leg of the Wye instead of calling and assigning CCTA forces to perform the work (System File MW-91-126/503-67-A SPE).
- (2) As a consequence of the violation referred to in Part (1) above, Track Laborer A. M. Garcia, Jr. shall be allowed six (6) hours' pay at his respective time and one-half 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.

Claimant holds seniority as a track laborer assigned to the Corpus Christi Terminal Authority (CCTA). The date in question was Claimant's designated rest day.

On July 13, 1991, a derailment occurred on the Southwest line at the Port of Corpus Christi, Texas while Union Pacific forces were switching cars. Union Pacific forces were called to re-rail the cars.

The Organization filed a claim on behalf of the Claimant contending that the Carrier allowed Union Pacific employees to "perform track maintenance work on the North Leg of the Y within the boundaries of the CCTA." The Claimant, the Organization contends, was "fully qualified and readily available" to do the work.

The Carrier denied the claim contending that the work performed by the Union Pacific employees consisted only of rerailing their own cars, and that all track repair work, around the switch and on track assigned to the CCTA, was left for the CCTA crew. Therefore, the Carrier contends there was no violation of the Agreement.

This Board has reviewed the record in this case and we find that the Organization has not met its burden of proof that the Agreement was violated when the Carrier assigned the Union Pacific forces to perform the track work in connection with the derailment. This Board finds that the Union Pacific properly called its own forces to perform the rerailing of the Union Pacific cars. It is questionable from the record whether the derailment actually occurred on that portion of the track maintained by the CCTA. However, there was insufficient evidence presented to support the proposition that even if the derailment had occurred on CCTA tracks, the work would have been exclusively reserved for the Claimant in this case.

The Organization bears the burden of proof in cases of this kind and it has failed to meet that burden. Therefore, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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