

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31232
Docket No. MW-30893
95-3-92-3-740

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
(
(Elgin, Joliet and Eastern Railway Company

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

- (1) The Agreement was violated when the Carrier assigned two (2) trackmen to perform water service mechanic's work (repair switch heaters) at the Chicago Heights area on December 22, 1990 (System File BJ-1-191/UM-1-91).
- (2) As a consequence of the violation referred to in Part (1) above, Water Service Mechanics G. Grencik and R. Vironda shall each be allowed four (4) hours' pay at their time and one-half rates."

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 Claimants hold seniority as water service mechanics assigned to a Monday through Friday workweek with Saturday and Sunday rest days.

On December 22, 1990, a Saturday, the Carrier assigned two track foremen to repair switch heaters near Chicago Heights. The Organization filed a claim on behalf of the Claimants contending that this type of repair work has customarily, historically and traditionally been performed by the water service mechanics. Furthermore, the Organization argued that the Claimants were fully qualified and available to perform the repair work. By assigning track foremen to perform this work, the Organization contends that the Carrier violated Rule 2 of the Agreement.

The Carrier denied the claim contending that the work in question involved clearing switches and removing snow and ice from the gas heaters at the spring switches. Once the gas heaters were cleared, the track foremen lit the gas heaters. Work of this type, the Carrier maintains, has been historically performed by track foremen. On the date in question, one of the gas supply lines to the heater was frozen. The foremen proceeded to thaw the pipe by removing and reapplying the hoses, air respirator and gas orifice. Finally, the foremen were able to light the heater. The Carrier contends that there was no Rule violation in that the pertinent Rule in this issue is Rule 5 and not Rule 2 as the Organization claims.

This Board has reviewed the record in this case and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it utilized two track foremen to make repairs on the switch heater.

Rule 5 of the Agreement specifically allows any member of the Organization to perform the work. It states:

"All work, except electrical work and remote actuation, in connection with installing and maintaining gas burning switch heaters and spring switches will be performed by employees under the scope of this Agreement."

The record reveals that track foremen can and have performed the duties of warming the gas lines. Those track foremen can also remove the hoses for safety reasons. The record further contains evidence that track foremen have customarily cleaned air respirators and gas orifices enabling the heaters to ignite. That is considered incidental maintenance work associated with the lighting of the heaters.

Although the Organization makes an argument relating to past practice, it is fundamental that where a Rule is clear and unambiguous, the Rule applies and past practice is of no consequence. In this case, Rule 5 is clear and unambiguous, and therefore, the claim must be denied.

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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 Noember 1995.