

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 31258  
Docket No. MW-30904  
95-3-92-3-771

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(The Kansas City Southern Railway Company  
( (former Louisiana and Arkansas Railway  
( Company)

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

- (1) The Carrier violated the Agreement when it assigned Roadmaster M. Gilcrease, instead of Section Foreman R. A. Norwood, to perform the work of oiling rail curves at Mile Posts T-60 and T-60.1 at Lassater, Texas on March 21, 1991 [Carrier's File 013.31-365(53) KCS].
- (2) The Carrier violated the Agreement when it assigned Roadmaster M. Gilcrease, instead of Section Foreman R. A. Norwood, to perform the work of oiling rail curves between Mile Posts T-0 and T-76, between Blanchard Junction and Pittsburg, Texas on May 16, 28 and June 1, 1991 [Carrier's File 013.31-365(57)].
- (3) The Carrier violated the Agreement when it assigned Roadmasters L. Stout and M. Gilcrease, instead of Section Foreman R. Oney, Laborers M. Bradshaw, A. J. Ray or W. B. Lindwood to perform the work of oiling rail curves, between Mile Posts T-134 and T-98, between Pittsburg and Thermo, Texas on May 21, 28, 30 and June 3, 1991 [Carrier's File 013.31-365(56)].
- (4) The Carrier violated the Agreement when it assigned Roadmaster M. Gilcrease and L. Stout, instead of Section Foreman R. Oney, Laborers A. J. Ray or W. B. Lindwood to perform the work of oiling rail curves, between Mile Posts T-76 and T-98 between Hughes Springs and Pittsburg, Texas and, between Mile Posts T-98 and T-134, between Pittsburg and Thermo, Texas, on June 3, 5, 7, 10, 12, 14, 17, 19, 21 and 24, 1991 [Carrier's File 013.31-365(55)].

- (5) The Carrier violated the Agreement when it assigned Roadmaster M. Gilcrease, instead of Section Foreman R. A. Norwood, to perform the work of oiling rail curves, between Mile Posts T-0 and T-76, between Blanchard Junction and Pittsburg, Texas, on June 19, 20, 23, 24 and 26, 1991 [Carrier's File 013.31-365(58)].
- (6) The Carrier violated the Agreement when it assigned Roadmasters M. Gilcrease, L. Stout and W. Matteson, instead of Section Foreman R. Oney, Laborers A. J. Ray, W. B. Lindwood or M. D. Bradshaw, to perform the work of oiling rail curves, between Mile Posts T-76 and T-98, between Hughes Springs and Pittsburg, Texas and, between Mile Posts T-98 and T-185, between Pittsburg and Thermo, Texas, on June 25, 26, and July 1, 2 and 3, 1991 [Carrier's File 013.31-365(54)].
- (7) The Carrier violated the Agreement when it assigned Roadmasters M. Gilcrease and W. Matteson, instead of Section Foreman R. A. Norwood, to perform the work of oiling rail curves, between Mile Posts T-0 and T-76, between Texas Junction and Hughes springs, Texas, on June 28, 30 and July 1, 2, and 6, 1991 [Carrier's File 013.31-365(61)].
- (8) The Carrier violated the Agreement when it assigned Roadmasters M. Gilcrease and L. Stout, instead of Section Foreman R. Oney, Laborers A. J. Ray, W. B. Lindwood or M. D. Bradshaw to perform the work of oiling rail curves, between Mile Posts T-98 and T-77, between Pittsburg and Hughes Springs, Texas and, between Mile Posts T-98 and T-185, between Pittsburg and Farmersville, Texas, on June 7, 9, 10, 16 and 17, 1991 [Carrier's File 013.31-365(60)].
- (9) The Carrier violated the Agreement when it assigned Roadmasters W. Matteson and M. Gilcrease, instead of Section Foreman R. A. Norwood, to perform the work of oiling rail curves, between Mile Posts T-0 and T-77, between Texas Junction, Louisiana and Hughes Springs, Texas, on July 21, 26, 29 and August 5, 1991 [Carrier's File 013.31-365(59)].

- (10) As a consequence of the violation referred to in Part (1) above, Section Foreman R. A. Norwood shall be allowed six (6) hours' pay at his straight time rate.
- (11) As a consequence of the violation referred to in Part (2) above, Section Foreman R. A. Norwood shall be allowed eighteen (18) hours' pay at his straight time rate.
- (12) As a consequence of the violation referred to in Part (3) above, Messrs. R. Oney, M. Bradshaw, A. J. Ray and W. B. Lindwood shall be allowed sixteen (16) hours' pay at their respective straight time rates of pay, to be divided proportionately between them.
- (13) As a consequence of the violation referred to in Part (4) above, Messrs. R. Oney, A. J. Ray and W. B. Lindwood shall be allowed one hundred sixty (160) hours' pay at their respective straight time rate of pay, to be divided equally between them.
- (14) As a consequence of the violation referred to in Part (5) above, Section Foreman R. A. Norwood shall be allowed thirty (30) hours' pay at his straight time rate.
- (15) As a consequence of the violation referred to in Part (6) above, Messrs. R. Oney, A. J. Ray, W. B. Lindwood and M. D. Bradshaw shall be allowed one hundred twenty (120) hours' pay at their respective straight time rates of pay, to be divided equally between them.
- (16) As a consequence of the violation referred to in Part (7) above, Section Foreman R. A. Norwood shall be allowed fifteen (15) hours' pay at his straight time rate and ten (10) hours' pay at his time and one-half rate.
- (17) As a consequence of the violation referred to in Part (8) above, Messrs. R. Oney, A. J. Ray, W. B. Lindwood and M. D. Bradshaw shall be allowed thirty-two (32) hours' pay at their respective straight time rate of pay and eight (8) hours' pay, at their respective time and one-half rate, to be divided equally between them.

- (18) As a consequence of the violation referred to in Part (9) above, Section Foreman R. A. Norwood shall be allowed twenty (20) hours' pay at his 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.

In this consolidated Claim, the Organization argues that the Carrier utilized supervisors to perform rail oiling work along various track locations. The nine (9) claims at bar each involve alleged Scope Rule violations in the performance of rail oiling work by different supervisors on different dates at various trackage locations. The extensive record includes the full on-property record of each instance with the named Claimants.

This Board has thoroughly reviewed the complete record. This work of oiling rail curves is clearly Scope protected. The disputed work belongs to the employees. The issue herein is whether the Organization has established in each of the nine separate instances the burden of proof necessary to demonstrate that the Carrier violated the Agreement.

In the instance of March 21, 1991, the Organization alleges that Roadmaster M. Gilcrease performed the work of oiling curves going north from Mile Post T-60, Lassater, Texas. The facts presented by the Organization are that the Roadmaster was observed doing so by Foreman Roger Oney at that point and date, as well as later that day oiling again at Mile Post T-61. Carrier's denial of that allegation is insufficient. There is a named observer of the oiling without more than a general denial that any violation occurred. The Claim of March 21, 1991 will be sustained.

This Board notes that beginning with Part 2 of the Claim and continuing through Part 9, our review demonstrates that the Organization's allegations are somewhat changed, as is the Carrier's refutation. The Organization for example makes a general allegation, as in Part 4 of the Claim, lacking any probative evidence as to who observed the violation. Such general assertions can be refuted with general denials as the Carrier did in each instance. Or, where the Organization became more specific in its asserted violations, the Carrier's refutations were specific as in Part 2 of the Claim. There, as in most other instances, the Carrier stated in pertinent part:

"In checking with Roadmaster M. Gilcrease for the dates of May 16 and 28, 1991, and June 1, 1991, I have been advised by Roadmaster Gilcrease that he did not grease and/or oil curves anywhere on his district on the dates of claim."

As a careful review of each set of on-property record confirms, except as noted in Part 1 of the Claim, the Carrier has sufficiently refuted the Organization's assertions.

Accordingly, this Board sustains Part 1 and Part 10 of the Claim for the reasons we indicated in our Third Division Award 29036. All other parts of this Claim are denied for lack of proof.

AWARD

Claim sustained in accordance with the Findings.

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 November 1995.