

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31262
Docket No. MW-30927
95-3-92-3-779

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 Employes
(Consolidated Rail Corporation

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

- (1) The Agreement was violated when the Carrier assigned Bridge and Building Subdepartment forces to perform trackman's work on the approach to bridges at Mile Posts 8.9 and 3.3, J. K. Passenger Siding, on May 21 and 22, 1991 (System Docket MW-2119).
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. L. W. McGarvey, Jr., E. C. Gailey, J. Kmett, F. R. Rabish and C. F. Miller shall each be allowed compensation for four (4) hours' pay at their respective overtime rates of pay for all time the B&B forces performed trackman's duties."

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 instant dispute involved work performed May 21 and 22, 1991, in the restoration of a bridge to service. The Organization alleges that the Carrier violated the Scope of the Agreement when it permitted Bridge and Building Department employees overtime to perform work belonging to Track Department employees who were sent home after their regular tour of duty.

During the progression of this claim, the Carrier denied the exclusivity of the work to Trackmen. It further argued that the Organization's facts were erroneous as B&B employees did not work overtime on May 21, 1991, and further, only one-half hour of overtime was performed on May 22, 1991.

The Organization has certainly done all that is possible to support its claim. Included in this record are statements demonstrating that the exact nature of the work disputed was "tamping bridge approach ties." The statement from Bridge Foreman Huggler and the extensive proof of overtime performed has been carefully considered. Certainly the Board is aware of the Organization's arguments that the work is exclusive. A study of the shifts document that B&B employees work four, ten hour days while trackman work five, eight hour days. Nevertheless, the claim cannot be sustained.

The Board must follow the language of the Agreement as negotiated by the parties. It is central to our decision to deny the Claim that the Scope Rule includes the following language:

"... The listing of a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of this Agreement."

There is nothing in this record to provide which "terms" supra, were violated by the Carrier. The Carrier argued that the disputed work was not exclusive to the Track Department employees had been performed previously by B&B Department employees. Given the language of the Scope Rule and the facts of this instant record, the Board is constrained to deny the claim (Third Division Awards 26761, 30640).

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.