

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 31356  
Docket No. MW-30586  
96-3-92-3-352

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(The Kansas City Southern Railway Company

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

- (1) The Carrier violated the Agreement when it assigned Roadmaster Mickey Gilcrease, instead of Section Foreman Roy Norwood, to perform the work of oiling rail curves at Mile Post T-47.9 on July 25, 1990 and Mile Posts T-49 and T-61 on August 9, 1990 [Carrier's File 013.31-365(47)].
- (2) The carrier violated the Agreement when it assigned Roadmaster Mickey Gilcrease, instead of Section Foreman Roy Norwood, to perform the work of oiling rail curves at Mile Post T-36.7 and in the vicinity of Mile Post T-50 on September 16 and 19, 1990, respectively [Carrier's File 013.31-365(48)].
- (3) The Carrier violated the Agreement when it assigned Roadmaster Mickey Gilcrease, instead of Section Foreman Roy Norwood, to perform the work of oiling rail curves at Jefferson, Texas on October 8, 1990 [Carrier's File 013.31-365(49)].
- (4) As a consequence of the violations referred to in Parts (1), (2) and (3) above, Section Foreman Roy Norwood shall be allowed twenty five (25) hours' pay at his pro rata rate of pay."

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 record sufficiently establishes that on the dates set forth in the claim, Roadmaster M. Gilcrease rather than Claimant, a Section Foreman, oiled rail curves.

On this property, it has been established that with respect to oiling rail curves "... the work is that appropriate to Maintenance of Way and particularly the track department ...." Third Division Award 29036. That Award sustained a similar claim where an Assistant Roadmaster oiled rail curves instead of the Section Foreman. That Award is not palpably in error and shall be followed.

We recognize that there are differences of opinion on how to remedy this kind of violation (see e.g., Third Division Award 28693 denying monetary relief because the claimant therein was working and allegedly suffered no monetary loss). However, and irrespective of whether Claimant was employed on the claimed dates, the violation of the Agreement in this case resulted in a loss of a potential work opportunity for Claimant. See Award 29036:

"... We do not find Third Division 28693 as dispositive of the monetary portion of the Claim before us. The work herein was shown by probative evidence to have belonged to the employees. In this instance, that work was removed and performed by a Carrier official in violation of the Agreement. There is nothing in the record to indicate that the Claimant could not have performed the work at another time or on an overtime basis. The record documents that the work was there to be performed, was in fact performed by the Assistant Roadmaster, and therefore a loss of work opportunity did occur. This is not a speculative Claim. The Claimant is to be compensated at his pro-rata rate of pay. Claim is sustained as presented."

We agree with the logic of Third Division Award 29036. Claimant shall be compensated for the lost work opportunities as claimed.

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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 29th day of February 1996.