

The dispute as set forth in the Statement of Claim, supra, originated in a letter dated July 21, 1992, from the Organization in which the following assertions were made:

"On June 25, 1992, two Management employees of Conrail, B.R. Rehm and T. E. Harris, performed work on three of Conrail's crossings. They were Route 34 in Mt. Holly, and Old Route 11 in Green Castle and Railroad Avenue in Shiremanstown. The work was performed between 1700 hours and 2200 hours.

Mr. Stoner was available to perform the work and he is on the overtime call list as required by APPENDIX 'P'. Mr. Stoner should have been called."

The claim was denied by Carrier and subsequently handled through the normal grievance procedures on the property. At the first appeal level, the Carrier in their denial of the claim stated as follows:

"Our research of the instant claim does not indicate that B. Rehm and T. Harris performed work of the craft nor has the original claim nor case as appealed provide any probative evidence to this effect, merely the allegation of work performed."

At the highest appeal level on the property, Carrier in their denial of the claim further contended as follows:

"In addition to the reasons cited in our November 12, 1992 denial of this case, it should also be noted that the Claimant was a regular assigned Inspector. The claim presented fails to identify what Inspector work the management employee allegedly performed. In addition, the claim was presented as a violation of Appendix 'P' of the Agreement which is applicable to trouble involving maintainers work outside of their regular working hours. Since the Claimant is not a maintainer Appendix 'P' is not applicable."

From a review of the case record as it developed, it is apparent that the named Claimant was a Signal Inspector headquartered at Harrisburg, Pennsylvania, with an assigned tour of duty from 7:00 A.M. to 3:30 P.M. with rest days of Saturday and

Sunday. When, on June 24 1992, the International Association of Machinists called a strike against the CSX Corporation, this Carrier, along with other Carriers, issued notices to its agreement-covered employees, including the Signalmen, that their positions were temporarily suspended for the duration of the strike action. This claim date represents the second day of the temporary suspension of Claimant's position because of the strike action.

The procedures of this Board permit either party to a dispute to file with the Board a rebuttal brief if either party perceives a presence of new or additional evidence or argument in the original ex-parte Submissions which had not been properly joined during the on-property handling of the dispute. In this case, neither party raised such an objection. Therefore, the evidence and arguments as presented in the respective ex-parte Submissions to the Board must be taken to be true and accurate.

In their presentation of this case, the Organization has submitted documented evidence in the form of Carrier-prepared reports of trouble calls and action taken on such calls which clearly show that on June 25, 1992, beginning at 5:00 P.M. there were, in fact, three separate trouble calls which involved signal equipment and which were, in fact, responded to and corrected by the two named individuals who were identified in the Organization's original claim as management employees. Carrier has not disputed either the origin or the accuracy of these trouble desk reports.

Carrier's position in this dispute is two-fold. First, they argue that the Organization has failed to offer probative evidence in support of their allegation relative to management employees performing agreement-covered work on the date in question, and secondly, that in any event, the named Claimant was an Inspector and therefore was not a proper claimant even if there was a violation of agreed-upon Appendix "P" which refers to the performance of "... Maintainer's work outside their regular working hours." Carrier cites with favor the decisions reached in Third Division Awards 19077 and 19103 as well as Award 24 of Special Board of Adjustment No. 1011 in support of this second contention.

From the Board's review of the record as it exists in this case, there is no dispute relative to Carrier's right to temporarily suspend Signalmen positions during the strike situation which existed at the time. This right to temporarily suspend positions did not, however, abrogate or otherwise annul the terms and conditions of the negotiated agreement of the parties including and especially the Scope Rule and Appendix "P."

There is nothing present in this case to suggest that the agreement-covered employees refused to cross picket lines which would have given Carrier the right to use non-agreement employees to perform needed service. There is nothing in this case record to suggest that the agreement-covered employees refused to perform any Scope-related duties or that they were ever asked to perform any Scope-related duties. The Board subscribes to the logic expressed in Third Division Award 28529 which held that "... once the jobs are abolished, the Carrier may not use non-agreement personnel to perform covered work." There is no doubt from the uncontroverted evidence as submitted by the Organization that other than agreement-covered employees performed agreement-covered work in this case.

The Board has reviewed the awards cited by Carrier in support of their position relative to the improper Claimant issue. In each of the cited cases, the dispute was between one agreement-covered employee versus another agreement-covered employee for the performance of agreement-covered work. The Board finds those awards to be properly dispositive based on the fact situations which existed in those cases. They are not of any benefit in our determinations in this case.

Here the situation involves the use of non-agreement employees to perform agreement-covered work. The Claimant, as an agreement-covered employee, has a greater right to perform agreement-covered work than does an employee who has no standing whatsoever under the negotiated Agreement's Scope Rule and Appendix "P."

Therefore on the basis of the record as it exists in this particular case, the Board concludes that a violation has occurred and the claim as presented is sustained.

AWARD

Claim sustained.

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Award No. 31955
Docket No. SG-31556
97-3-93-3-523

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 19th day of March 1997.