

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33441
Docket No. MW-32639
99-3-95-3-573**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier allowed Assistant Roadmaster K. Wallace and Burro Crane Operator H.D. Renfro to perform track work (laying out rail) at Mile Post CMZ-197.0 on the Blue Ridge Subdivision at Rocky Siding, Spruce Pine, North Carolina on November 4, 1994, instead of calling and assigning SPG Gang 5XC5 Gallion Crane Operator N.R. Judd and Foreman J.A. Wiseman [System File 21(49)(94)/12(94-1054) CSX].**
- (2) As a consequence of the above-stated violation, Gallion Crane Operator N.R. Judd and Foreman J.A. Wiseman shall each be allowed ten (10) hours' pay at their applicable 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 were given due notice of hearing thereon.

Messrs. Judd and Wiseman (Claimants) have established and hold seniority as Gallion Crane Operator and Foreman, respectively, in the Track Subdepartment. At the time this claim arose, each was assigned to Curve Patch SPG Gang 5XC5, a rail laying gang. Claimants were regularly assigned to work Monday through Thursday, ten hours each work day, with assigned rest days Friday, Saturday and Sunday. During the workweek immediately preceding the incident involved herein, SPG Gang 5XC5 was performing work near MP CMZ-197.0 on the Blue Ridge Subdivision at Rocky Siding, Spruce Pines, North Carolina.

There is no dispute that on November 4, 1994, Burro Crane Operator H. D. Renfro together with Assistant Roadmaster K. Wallace set rail on the Blue Ridge Subdivision, with Mr. Renfro operating the crane and Assistant Roadmaster Wallace not only supervising, but also threading rail into the center of the track. This work was performed to "prepare the track" for work to be performed by SPG Gang 5XC5 during the following week.

On December 27, 1994, General Chairman Simpson submitted a claim on behalf of Messrs. Judd and Wiseman alleging Carrier had violated Section 7 of the Agreement because, "This work was part of SPG Gang 5XC5 work and Mr. Judd is Gallion Operator and Mr. Wiseman is the Foreman on this Gang."

Carrier denied the claim contending that:

"With respect to the claims against the Assistant Roadmaster, Mr. Wallace states that the only work performed by him was instructional in nature for short periods of time and were incidental to his supervisory duties. Under no stretch of the imagination would the minimal amount of time consumed in this instruction violate any agreement or warrant the recall of a furloughed employee.

With respect to the claim in connection with rail placement, it is the Carrier's position that this preparatory material handling function is not

work which accrues exclusively to either local forces or System Production Gangs.”

The Organization premised its claim upon Section 7 - Overtime of the Agreement which provides:

“B. The right to work overtime, when required on System Gangs, will accrue first to the incumbent of the position of which the overtime is required. If declined by the incumbent, overtime will be performed by the senior qualified employee in the System Gang indicating a desire to work overtime. If no employee desires to work overtime and overtime is required, the junior qualified employee in the System Gang involved will work the overtime.”

The Organization alleged that Claimants had a contractual right, under Section 7(B), noted supra, to the work at issue. Therefore, it was incumbent upon the Organization to prove, through clear and convincing evidence, that the work in dispute belonged to Claimants. In these particular circumstances, the Organization failed to shoulder its burden.

It appears to be settled by Third Division Award 32914 that the preparatory material handling work in dispute is not the exclusive work of either local forces or System Production Gangs. Nor did this work accrue to any one assignment or the incumbent of any one assignment. In other words, Carrier was not required to utilize Claimants for overtime work that was not assigned specifically to them as incumbents of a specific position. This claim alleges a violation of Section 7 - Overtime, which we find to be not proven. Because that is the only Agreement provision involved in handling on the property, we neither express nor imply any opinion on the de novo and sub rosa suggestion by the Organization that a Scope Rule violation might also have been involved. Based on all of the foregoing, this claim is denied.

AWARD

Claim denied.

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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 23rd day of August 1999.