

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33852
Docket No. MW-34039
99-3-97-3-576**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Roadmaster D. C. Schlomer to perform Maintenance of Way work between Mile Posts 170.0 and 203.0 on November 17, 1995, instead of assigning Messrs. M. W. Patton and J. W. Roach to perform said work (System File C-03-96-S330-01/8-00265 CMP).**
- (2) As a consequence of the aforesaid violation, the Claimants shall each be allowed four (4) hours' pay at their respective 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.

The instant dispute arose on November 17, 1995, when a Roadmaster spent four hours inspecting track and making necessary track repairs. The Organization maintains that the Roadmaster performed Scope covered work, in violation of the Agreement. Carrier responds that the Organization failed to prove that the work involved was reserved exclusively to Agreement-covered employees and that, in any event, the claim for eight hours pay at the time and one-half rate is excessive.

Carrier's exclusivity argument is misplaced. The Board has held on several occasions that the Organization need not establish that Agreement-covered employees exclusively performed the work in question when the claim involves work performed by Supervisors. See, e.g., Third Division Awards 25991 and 28349. As the Board observed in Award 28349:

"The Carrier also bases its defense on the alleged non-exclusivity of supervisory work, not resting solely with B&B Foremen. This argument is not persuasive here. . . . [T]his is not an appropriate instance for the exclusivity test. This is not a dispute as to which craft, subdivision of craft, or classification is appropriate; rather, it is a Claim concerning the performance of Agreement work by a non-represented supervisory employee."

We see no reason to deviate from past decisions of the Board. Accordingly, we reject Carrier's defense based on the allegation that the Organization cannot establish its exclusive right to perform the work at issue.

However, we agree with Carrier that the claim for eight hours at the time and one-half rate is excessive. The record established that the Roadmaster spent four hours performing the work at issue. There is no justification for awarding four hours pay to two different employees. Furthermore, the record established that the work was performed during the Claimants' normal working time. Accordingly, we will award a total of four hours' pay (not four hours to each Claimant) at the straight time rate.

AWARD

Claim sustained in accordance with the Findings.

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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 21st day of December 1999.