

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 34985
Docket No. MW-32352
00-3-95-3-201

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned other than Track Sub-Department forces to perform track work (unloading crossties) at the Madison Railroad Yard, Madison, Illinois on March 15, 22, 31, April 7, 11, 13 and 15, 1994 (System File 1994-23/013-293-16).
- (2) As a consequence of the violation referred to in Part (1) above, Machine Operator R. Gower shall be allowed sixteen and one-half (16.5) hours/pay at his time and one-half rate for all time expended by the Carmen and Mechanical Department forces in the performance of the work in question.”

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 material facts that led to this claim are not in dispute. On March 15, 22 and 31, and on April 7, 11, 13 and 15, 1994, an Engine House Laborer and two Carmen unloaded crossties from a flatbed truck at Madison Yard.

On April 22, 1994, the Organization submitted a time claim on behalf of Claimant R. Gower, a Machine Operator in the Carrier's Track Sub-Department. The Organization alleged that by assigning the unloading of track material (crossties) to Carmen and to employees from the Mechanical Department, the Carrier violated Rules 1, 2, 5, 7 and 13 of the Agreement governing Maintenance of Way Employees. The Organization requested that the Claimant be allowed the 16.5 hours of overtime he was deprived of by this violation.

The Rules cited by the Organization are all general in nature. They do not exclusively reserve the work of unloading track material to employees of the Carrier's Track Sub-Department. The Carrier asserts that the loading and unloading of track material has been performed by several crafts and classes of employees on this property.

The Organization has not refuted the Carrier's assertion by demonstrating that Track-Sub Department employees on this property have unloaded track material to the exclusion of other crafts and classes of employees. Therefore, it has not proven that the Claimant had the exclusive right to unload crossties from flatbed trucks in March and April, 1994. The claim must be denied as a result.

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 20th day of September, 2000.