

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35377
Docket No. MW-34087
01-3-97-3-491**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Paducah and Louisville Railway, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Class IV Heavy Machine Operator E. E. Wilson to perform trackman’s duties between Mile Posts J 23 and J 91 on August 12 through September 16, 1996 and continuing, instead of recalling and assigning furloughed Trackman J. L. Lewis to perform said work.**
- (2) As a consequence of the aforesaid violation, Mr. J. L. Lewis shall be compensated at the appropriate Class III Trackman/Bridgeman’s rate of pay for the total number of hours expended by Heavy Machine Operator E. E. Wilson in the performance of trackman’s duties during the period 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 basic facts are not in dispute. The Carrier assigned an employee holding a higher pay-rated Heavy Machine Operator position to perform the work of a lower pay-rated Trackman position instead of recalling the Claimant from furlough. The Carrier did not question the Claimant’s availability, qualifications or willingness to perform the work nor did it refute the Organization’s assertion that the higher rated

employee performed the lower rated work “continuously.” The Carrier’s sole defense to the claim was that there was no violation of the Agreement as asserted in the claim. The Carrier did not elaborate with additional reasoning, documents or other evidence.

The central issue herein is whether the disputed work belongs exclusively to Trackmen. In sole support of its position that such work is exclusively reserved, the Organization cited Scope Rule 1(a) and Appendices 1 and 2 as well as a number of prior Third Division Awards. There is no evidence of past practice on the property and none of the cited Awards involves these same parties, facts, and Rule language.

As the Board said in Third Division Awards 26548 and 2042:

“It is well established that Claimant must bear the burden of proving exclusive jurisdiction over work to the exclusion of others. This Board has also found that when there is a jurisdictional question between employees of the same craft in different classes, represented by the same Organization, the burden of establishing exclusivity is even more heavily upon Petitioner.”

Our review of Rule 1(a) reveals a general type of Scope Rule. It does not contain any wording that explicitly reserves work to any given classification or to covered employees as a whole, for that matter. The same is true of Appendix 1 and 2. Neither contains descriptive language from which it can reasonably be inferred that work of a given type is exclusively reserved to a given classification. To the contrary, Appendix 1 lists only job titles and respective pay class numbers and corresponding rates of pay. Appendix 2 provides general skill level descriptions and rates of pay. None of the cited provisions contains an express prohibition on the use of higher rated employees to perform the work of lower rated positions.

A careful review of the prior Awards cited by the Organization shows them to be inapposite. As noted previously, they involve different parties and significantly different facts and Rule language. A number of them were decided on the basis of separate seniority rosters and Rules that confine work assignments to those holding seniority and working in the given class. No such seniority-based arguments were advanced by the Organization on the property, nor was the existence of such seniority Rules asserted in support of the claim.

On this record, therefore, we are compelled to find that the Organization has not fulfilled its burden of proving that the disputed work was exclusively reserved for performance by Trackmen.

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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 March, 2001.