

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37349
Docket No. MW-35992
05-3-00-3-77

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Assistant Supervisor R. G. Rounds to perform Maintenance of Way work of inspecting track on June 4, 5, 8, 10, 11, July 10, 13, 14, 27, 28, 29, 30 and August 17, 1998 on the Dewitt Sub-Division of the Mohawk-Hudson Seniority District rather than assigning Foreman D. E. Hayes to perform said work (System Dockets MW-5401 and MW-5374).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. E. Hayes shall be allowed one hundred four (104) hours' pay at his applicable straight time rate and twenty-seven and one-half (27.5) hours' pay at his applicable time and one-half rate for the time spent by the assistant supervisor in performing the Maintenance of Way work on the dates cited above.”

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 Organization asserts in two claims which have been consolidated that on various dates, Assistant Supervisor R. G. Rounds performed scope covered work when he allegedly performed track inspection functions. The Organization relies upon the Scope Rule (for "... employees ... engaged in work generally recognized as Maintenance of Way work, such as inspection ... of ... tracks. ...") and an April 20, 1998 memo from the Carrier on the subject of "Supervision Performing Craft Work" ("... craft work will not be performed by supervision ... this is a violation of the prevailing agreements and will not be tolerated ... supervisory personnel will be used in a supervisory role to supplement this work force").

On the dates in dispute, Assistant Supervisor Rounds performed duties as a pilot for the operator of a Sperry Track Inspection Car. Therefore, there are really two aspects to this dispute - (1) Rounds' functioning as a pilot for the Sperry Car; and (2) Rounds' alleged performance of track inspection work.

In the on-property handling, the Organization conceded that "... piloting is not specifically mentioned in the Scope of the CRC/BMWE Agreement. ..." With respect to piloting, the Scope Rule is therefore general, requiring the Organization to demonstrate "... by probative evidence that employees covered by the Agreement have in the past performed the disputed work to the exclusion of others." Third Division Award 35840. The Carrier's assertion on the property that "... the work of piloting on-track equipment does not accrue exclusively to employees covered by the BMWE Agreement ... [because] piloting is done by various employees, including Engineers, Trainmen, Supervisors, and Non-Agreement personnel" has not been sufficiently refuted by the Organization. Exclusivity with respect to piloting has not been shown. The piloting aspect of the claim shall therefore be denied.

The Organization also asserts that Assistant Supervisor Rounds improperly performed inspection work. The Scope Rule does cover "... inspection ... of ... tracks. ..." The Organization argues that when the Sperry Car inspects track and detects a possible defect, the defect must be inspected by a qualified scope covered Track Inspector. In support of this aspect of the claim, the Organization provided a series of "Detailed Report of Detector Car Findings" showing information including defect number, location, type and remedial action. However, we are unable to conclude that these reports sufficiently show that Assistant Supervisor Rounds performed track inspection functions as opposed to merely being present in his capacity as a pilot when the Sperry Car detected the track defects reflected in the reports. Without more, the Organization has not sufficiently shown an improper performance of track inspection work by non-scope covered individuals. The inspection portion of the claim shall also be denied.

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 24th day of February 2005.