



Award No. 15047

Docket No. MW-15720

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned or otherwise permitted a General Foreman to perform the work of a Wing Operator on a chemical spray train on December 2, 3, 4, 5 and 6, 1963. (Carrier's File 134-218-511 Spl. Case No. 325 MofW.)

(2) Mr. R. J. Weaver now be allowed forty (40) hours' pay at the straight time rate of a Wing Operator and, in addition, pay at the time and one-half rate of said position for the exact number of over-time hours worked by the General Foreman during the period set forth in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Under date of November 11, 1963, the Carrier issued Bulletin No. 25 advertising the positions of Head Operator and Wing Operator on a chemical spray train which was scheduled to and did perform chemical weed spraying work on the Mississippi Division. On November 22, 1963, the position of Head Operator was assigned to S. B. Davis and the position of Wing Operator was assigned to E. L. Weaver, each of whom held seniority in the Track Department as Group 3 Machine Operators.

While Wing Operator Weaver operated the spray nozzle on one side of the train, a General Foreman of Track, who is excepted from the scope of this Agreement, operated the nozzles on the other side of the spray train and frequently took over the work and duties of the regularly assigned Head Operator while said head operator operated the spray nozzles otherwise operated by the General Foreman.

The claimant, who had established and held seniority as a Machine Operator in Group 3 of the Track Department on the Mississippi Division, was available, willing and fully qualified to have performed the Wing Operator's work assigned to the General Foreman of Track and to the Head Operator.

The agreement between the parties dated June 1, 1962 is by reference made a part of Carrier's statement of the facts.

THE ISSUE: The issue in the case before the Board is whether the General Foreman, a supervisory employe excepted from the scope of the Maintenance of Way Schedule Agreement on the Illinois Central, did in fact perform work rightfully and exclusively belonging to covered members of the Maintenance of Way Craft. We are hampered, however, since in the Union's handling of the matter they have failed to describe with precision the nature of the work performed by the General Foreman, and to demonstrate with corroborative evidence that performance of that work was objectionable and contrary to the Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim here is based on the contention a General Foreman performed work of a Wing Operator on a chemical spray train in violation of the Agreement.

A review of the record discloses that the Organization's contention is based on mere assertions which we have time and again held not to constitute evidence.

Carrier challenges the jurisdiction of this Board to consider this claim, asserting a conference between the parties had never been held under Section 2, Second, of the Railway Labor Act. Such section directs the parties to consider and, if possible, decide disputes in conference on the property.

The record is in conflict as to whether conference was had, however, our review of the record in its entirety would indicate some conference was had.

The burden of proof is on the Organization and in this case the Organization has not sustained the burden of proving that the Agreement was violated.

On the other hand, Carrier states that the General Foreman may have operated the nozzles of the spray machine to properly instruct in the performance of work.

We do not see that this was an abuse of discretion by the General Foreman in the exercise of his supervisory responsibilities. The Organization has failed to prove that the Agreement was violated.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of December 1966.