

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19360
Docket Number MW-19015

Arthur W. Devine, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Louisville and Nashville Railroad Company

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

(1) The Carrier violated the Agreement when, on May 19, 27, June 3, 10, 16, 24 and July 1, 1969, it assigned other than Track Department forces to perform the work of cleaning and graphiting switches at Boyles Yard and hump leads. (System File 1-16/E-304-12)

(2) Track Sub-department employees J. H. Rutland, R. Reed, L. L. Gordon and W. Hayes each be allowed fifty-six (56) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: The claim herein is in behalf of Maintenance of Way employees because of signal maintainers allegedly cleaning and graphiting power switches in Carrier's Boyles Yard.

Cleaning and graphiting of switches is not mentioned in the scope rule or any other rule of the agreement covering Maintenance of Way employees. In the handling of the dispute on the property the Carrier steadfastly maintained that it has always been the practice for signal maintainers at Boyles Yard to graphite switches, and that 90 per cent of all power switches on the railroad are graphited by signal maintainers.

In the handling of the dispute on the property the Organization did not submit sufficient probative evidence to overcome the assertions of the Carrier. The one statement which it is said was signed by four signal maintainers is not sufficient to overcome the positive assertions of the Carrier. The evidence submitted by both sides that was not made a part of the dispute on the property will not be considered by the Board.

It is well settled that the Organization has the burden of proving every element of its claim that is not accepted by the Carrier. As the Organization has failed to prove that the work complained of is that belonging to Maintenance of Way employees, the claim will be dismissed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.