

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19722
Docket Number MW-19303

Alfred H. Brent, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The 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 other than Track Department forces to perform the work of stripping, ballasting and surfacing the repair tracks at East St. Louis, Illinois on October 8, 9, 12, 21 and November 20 and 21, 1968. (System File SLN-80-T-68/Case 608).

(2) Section Foreman S. C. Dancy, Section Laborers C. Mosley, S. Kelley, J. Bigby, J. Gettis, I. Cruse, J. H. Parks and J. C. Rice each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours consumed by other forces in performing the work referred to in Part (1) of this claim.

OPINION OF BOARD: The Organization contends that the Carrier on six occasions improperly assigned work of stripping, ballasting and surfacing track to Car Department employees at East St. Louis, Illinois, since this work is regularly performed by Maintenance of Way employees. Thus, the Organization infers that the Scope Rule of their agreement was violated.

When the case was heard on the property the Carrier contended that the work was properly assigned because it was, in fact, work connected with the renewing of the walkway along the repair track (RP 38, 40 and 43) and as such, was not work reserved exclusively to Maintenance of Way Employees.

However, in the submission of the Highest Officer on the property, (RP 25), it was admitted by him that the work performed did not consist of merely repairing the walkway, as alleged by the Carrier, but "A combination of decreased maintenance and the heavy rains in the fall of 1968 made the working conditions at the rip (repair) track at East St. Louis unpleasant.... New ballast was ordered and the Car Department forces removed the old grease soaked ballast and distributed new ballast in its place. At certain points in the track the rail was almost entirely submerged in water, and the employees lifted the rail and shoveled ballast under the rail in an attempt to raise the rail above the water level."

In the light of this admission, this Board finds that the agreement was violated as alleged by the Organization.

This Board has repeatedly held that the parties are bound by the way the case was handled on the property, (see Awards #11939 Dorsey, #11986 Rinehart, #12388 Englestein, #14879 Dorsey, 16061 Kenan, 16423 Goodman) and that the Carrier's defense is limited to the reasons given by the Highest Officer on the property.

The record shows no evidence of monetary loss by the **Claimants**. In the absence of any penalty provision in the agreement, the Board, as it has held so many times in the past, must deny the monetary portion of the claim.

See Awards #18540 Rimer, 18373 Dorsey, 18072 Dugan, 17994 Quinn, 16693 Dugan, 15624 McGovern, 15062 Ives.

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:

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 Agreement was violated.

A W A R D

Claim #1 is sustained.

Claim #2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1973.