

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20142
Docket Number MW-19977

Frederick R. Blackwell, 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 and established practice thereunder when it assigned signal forces instead of track forces to remove coal, dirt or other debris from under the retarders at Boyles Hump, Birmingham, Alabama on March 8, 18, April 26, 27, 28, 29, May 3, 4, 5 and 6, 1971 (System File 1-16/E-304-12 E-304).

(2) Foreman J. H. Rutland and Track Repairmen R. Reed, L. L. Gordon and W. Hayes each be allowed eighty (80) hours of pay at their respective straight time rates.

OPINION OF BOARD: The issue here is whether MofW Employees or Signal Department Employees are entitled to the work of cleaning coal, dirt, and other debris from beneath the car retarders at Boyles Hump, Birmingham, Alabama. Prior to this dispute, track forces of the MofW Department performed the disputed work at Boyles Hump; track forces also performed similar work at Decoursey Yard, Covington, Kentucky.

The Carrier's defense is that the work is reserved to Signal Employees because their Scope Rule specifically covers "maintenance of car retarders and car retarder systems." The particulars of Carrier's position that the work was maintenance of car retarders are found in a July 6, 1971 letter from Carrier's Division Engineer to the General Chairman, and in a September 28, 1971 letter from the Division Engineer to Carrier's Assistant Vice President.

"Letter of July 6, 1971

The cleaning on or about the retarders that was performed by the Signal men on the above dates was to clean the retarder and the mechanism of the retarder so that the retarders would work properly and they did not do any cleaning of the track or any work pertaining to the track."

"Letter of September 28, 1971

On the dates claimed, the signal forces cleaned dirt from around the Fulcrum pins to facilitate greasing of the fittings which is necessary on a two-week schedule period. In addition, the dirt was pulled from under the lower lever as it was interfering with proper cylinder operation. Most of the dirt in and around the Fulcrum pin has to be blown out with the air hose. Also, air hose was used in cleaning the top side of the retarder. The cleaning of the retarder has always been considered signalmen's work and we do not think that there was any track work done.

This work was done under traffic and one man mostly watched the traffic as a safety measure. Signalmen are best acquainted with work on retarders under traffic."

While the Petitioner concedes that, to an extent, the work of cleaning on or about the retarders is maintenance work reserved to the Signalmen, the Petitioner argues that the line between retarder-maintenance and track work was crossed when the Signalman cleaned debris from under the retarders to the bottom of the tie. (Petitioner's Emphasis) Carrier's reference to pulling dirt "from under the lower lever" puts the parties in general agreement that the cleaning work went to some depth beneath the retarders. But depth is not the decisive fact in this dispute; the reason for the depth, whether related to the retarders or to the tracks, is decisive on the issue of which craft should have done the cleaning work. In this regard the Carrier stated from the outset that the reason for the work was to maintain the retarders; Carrier admitted that dirt was pulled from under the lower lever, but contended that this, too, was maintenance to permit proper cylinder operation. The Employees did not challenge the reason advanced by Carrier and, moreover, the Employees never asserted that the reason for the work pertained to the tracks. The mere fact that the cleaning was under the retarders and down to the bottom of the tie does not prove that the work belonged to MofW Employees, nor does such fact show that the work was not retarder-maintenance. In these circumstances, we conclude that Petitioner has not carried its burden of proof, and hence, we must accept as fact the Carrier's assertion that the reason for the work was to maintain the retarders.

In conclusion we note that, as a result of a MofW claim filed in 1961, MofW Employees now perform work at Decoursey Yard, Covington, Kentucky, which appears to be similar to the work in dispute here. This does not affect the instant dispute. The Decoursey situation does not change the reason for the performance of the work in the dispute before this Board, nor does it change the language of the Agreement Rules which are pertinent to the dispute. In short, this case turns on the fact that Petitioner did not refute Carrier's asserted purpose for the work; accordingly, we found as fact that the work was done for the purpose of maintaining the retarders.

In view of the foregoing, and on the whole record, we shall deny the claim.

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 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

The claim is denied as per the Opinion.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1974.