

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21456
Docket Number MW-21553

David C. Randles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Norfolk and Western Railway Company (former Virginian Ry. Co.)

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

(1) The Carrier violated the Agreement when it assigned assistant roadmasters instead of Section Foreman S. A. Acord and Assistant Section Foreman D. Morgan, Jr. to patrol track assigned to Section No. 2, G.R.B., New River Division (System File MW-MU-74-6/V-TC-18).

(2) Because of the aforesaid violation, the monetary claim presented on the property shall be allowed. Said claim reads:

'We are claiming time beginning July 9, 1974
4:00 p.m. to 7:30 a.m. until this duty is re-
stored to our section foreman and whatever
men are necessary to patrol his respective
territory, as has been a practice for some 25
years on New River Division.

We are requesting that you pay the above employes
at their overtime rates for each day after their
regular tour of duty beginning July 9, 1974 at
4:00 p.m.'

OPINION OF BOARD: The Organization claims that the Carrier violated the Agreement when it assigned three Assistant Roadmasters to perform patrol work over a section of newly constructed railroad.

The contentions of the Organization in the claim are that this work has been historically the work of Maintenance of Way employes, seven of whom attested to that fact, and that the Claimants herein should be given overtime benefits for the work that was improperly assigned.

The Carrier maintains that the Claimants do not have the exclusive contractual right to perform said work, and, even if they did, the Claimants could not have been able to perform it.

The issue at hand is the question of whether or not the Scope Rule of the Maintenance of Way Agreement was violated. The Scope of work clause in said collective bargaining agreement is specific in nature, to wit:

SCOPE Rule No. 1

"These rules shall govern the hours of service, working conditions and rates of pay of all employees in the Maintenance of Way and Structures Department, including crossing watchmen or tenders, track, tunnel and bridge watchmen, lampmen, pumpers, pile driver, crane and ditcher watchmen, work train engine watchmen, camp cooks and camp attendants, draw bridge tenders, roadway machine inspectors and repairmen, pump repairmen, and pump repairmen helpers. This agreement shall not apply to the following:

1. Supervisory officials of higher rank than foremen.
2. Clerical and civil engineering forces.
3. Employees in signal, telegraph and telephone maintenance departments."

The burden of proof herein is upon the Claimants. The Board in numerous decisions has held that such a claim must show system-wide exclusivity. Such exclusivity has not been proven.

The Scope Rule does not mention patrol work. Axiomatic to contract language is the principle: To express one thing is to exclude another. To be exhaustive in delineating a specific Scope provision is construed by the Board to mean that others were meant to be excluded.

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

That the Agreement was not violated.

A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 18th day of March 1977.

