

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21855
Docket Number MW-21758

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated and continues to violate the Agreement when it abolished the position of Caboose Supplyman at Savanna, Illinois effective December 31, 1974 and thereafter assigned the work accruing thereto to P.F.I. men (System File C##4/D-1835).

(2) Mr. P. A. Esposito be returned to his position as Caboose Supplyman.

(3) Mr. P. A. Esposito be allowed, in addition to what he may have earned on another position, eight (8) hours of pay at the Caboose Supplyman's straight-time rate for each work day (Monday through Friday) on which P.F.I. men or others perform Caboose servicing work at Savanna, Illinois.

OPINION OF BOARD: Effective December 31, 1974, the Carrier abolished the position of Caboose Supplyman, theretofore performed by Track Sub-department forces, and assigned such work in the future to Perishable Freight Inspectors (PFI), represented by the BRAC. The Organization has brought this action on behalf of the Claimant, who had occupied that position since February 1, 1968. It contends the abolishment of the Claimant's position when such work continued to exist and the assignment to others not represented by the BMW was a violation of the Agreement between the parties.

The Carrier rejects this claim on the basis that the Organization has not shown exclusive right to the work on a System-wide basis, as has been established in past Awards in this Division. It also points to a lack of specificity in the Agreement between the parties as to this work, insofar as the Scope Rule or any other Rule is concerned.

This case is directly related to claims established previously by the Organization on the assignment of overtime to others for caboose supply work after the Claimant's regular hours (Award 21854), and the assignment of overtime on the Claimant's days off (Saturday and Sunday) to others after the Carrier abolished the position of Lampman-Cabooseman (also represented by the Organization) on December 6, 1974. (Award 21856)

The same rationale developed for those cases, particularly Award 21854, is applied here: we find that the doctrine of exclusivity previously established through Awards, that an Organization must be able to show representation System-wide applies here; and, that a showing of historical representation of a position at a location within the System is insufficient to establish exclusive right to that position. While the Organization established this record at the Savanna facility, as well as other locations in the System, the Carrier contra-established representation by: other organizations singularly at various locations, dual representation by more than one Organization at other locations, outside contractor utilization at other locations and, mixed contractor/organization representation at others. This lack of exclusivity for caboose supply work to any one Organization on a System-wide basis is compelling evidence that the Carrier is not restricted from exercising discretion in the assignment of caboose supply work. Additionally, the Agreement between the parties hereto referenced is devoid of reference to this work in any rule.

We hold that the claim is without merit.

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 Agreement was not violated.

A W A R D

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1978.