

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23357
Docket Number MW-23108

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Missouri Pacific Railroad Company
(Former Texas and Pacific Railway Co.)

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

(1) The Agreement was violated when Patrol Foreman K. R. Austin was not called to perform overtime service patrolling track on his assigned territory (Mile Post 120 to Mile Post 217) on December 10 and 11, 1977, January 1, 2, 14, 21, 28, February 18, 19, April 7 and May 1, 1978 (Carrier's Files S 247-5657 310-236 and S 310-245 310-246).

(2) Patrol Foreman K. R. Austin now be allowed fifty-nine and one-half (59-1/2) hours of pay at his time and one-half rate because of the aforesaid violation."

OPINION OF BOARD: The Claimant is a Patrol Gang Foreman, working Monday through Friday.

On certain claim dates, the Carrier used a Section Foreman to patrol track between Mile Post 120 and Mile Post 217 (Claimant's assigned territory).

In this particular dispute, the Employees cite Section 1(j) of Rule 14:

"(j) WORK ON UNASSIGNED DAYS. Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

The Carrier has raised the contention that the Claimant was not the only employee to perform patrolling duties, and it argues that patrolling of track is part of the assigned duties of all Foremen, to be performed during their regular work week.

The Organization points out that "work on the unassigned day" rule stands on its own merits and does not require a showing of "exclusivity." Be that as it may, the Board is of the view that a factual matter distinguishes this claim from other claims which have been the basis for the just-cited conclusion. In this case, the Carrier has maintained - and we see no evidence to the contrary - that the employees who were called do more than merely "patrol track." The Carrier asserts that other employees besides the Claimant patrol the particular specific track in question during the work week and thus, the Carrier concludes that the senior employee may be selected when work is shared by several employees during the week.

Thus, limited to the facts of this particular case, we are inclined to find that this Claimant would not fall within the definition of the "regular employee" to the exclusion of the employees who were utilized. Based upon that factual conclusion, the claim is denied.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1981.