

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24435
Docket Number MW-24541

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Consolidated Rail Corporation (formerly The Delaware,
{ Lackawanna and Western Railroad Company)

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

(1) The Agreement was violated when furloughed Trackman P. C. Smyczynski was not called to perform service as a trackman on August 15, 1980 and the Carrier instead used Track Supervisor J. S. Thoman for such service.

(2) Furloughed Trackman P. C. Smyczynski be allowed eight (8) hours of pay at his straight-time rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: By letter to Carrier dated September 28, 1980 Claimant, Peter C. Smyczynski, alleged that Carrier was in contravention of General Contract Rule 26 when it permitted track supervisor J. S. Thoman to perform work on August 15, 1980 reserved for Trackmen covered under the same General Contract.

Rule 26 reads in pertinent part at (a):

"(a) Unless otherwise agreed to between representatives of the Management and the General Chairman, all work of maintaining the Bridge and Buildings; Tracks and such other facilities as come under the jurisdiction of the Sub-Departments specified in the scope rules, will be performed by employees covered by this agreement."

The Scope Rules of the applicable Agreement read, in pertinent part:

SCOPE

"The rules contained herein shall govern the hours of service, working conditions and rates of pay of the following employees in the Maintenance of Way and Structures Department:

BRIDGE AND BUILDING

"Leading Mechanics, Mechanics (carpenters, iron workers, repairmen, masons, scalemen, dock builders, and painters) and their Helpers, Bridge Inspectors, Drawbridge Tenders, Drawbridge Deckmen, Floating Equipment Operators, Floating Equipment Watchmen, Pumpmen, Cooks, Assistant Cooks, Watchmen and Laborers employed in the Bridge and Building Sub-department of the Maintenance of Way and Structures Department;

TRACK

"Track, Gardener, Patrol, and Repairmen Foremen and their Assistant Foremen, Rock Inspectors, Material Inspectors, Rockmen, Repairmen, Curve Liners, Assistant Repairmen, Crane Operators, Truck Driver, Insulated Joint Repairmen, Crossing and other Watchmen, Repairmen Helpers, Cooks Assistant Cooks, Trackmen and Laborers employed in the Track Sub-department of the Maintenance of Way and Structures Department;

TREATING PLANT

"Foremen, Assistant Foremen, Carpenters, Carpenter Helpers, Watchmen and Laborers employed in the Treating Plant Sub-department of the Maintenance of Way and Structures Department and assigned to work at the Federal Creosoting Plant at Paterson, New Jersey."

Specifically, Claimant alleges that track supervisor Thoman loaded angle bars into the loader bucket of tractor W208 on August 15, 1980 in contravention of Agreement Rules herein cited.

An analysis of the record before the Board shows that the Organization is correct in stating that the position of track supervisor is not cited under the Agreement Rules in question. On the other hand Carrier contention is that the track supervisor did the work for only a short period of time (i.e. 20-30 minutes) and that this was consistent with past practice. The record fails to support either contention of the Carrier and witness affidavits presented by the Claimant affirm the contrary. Track supervisor Thoman was not contractually authorized to perform the work herein in dispute. This Board has ruled on numerous occasions that work which belongs to those covered by a collective bargaining Agreement cannot be given away to others who are not covered by said Agreement except in extraordinary circumstances (Third Division Award 19268 inter alia). No evidence of a substantial nature has been presented to this Board to suggest that such circumstances herein hold.

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 violated.

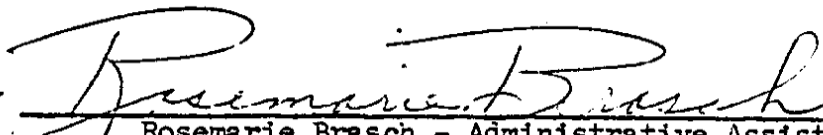
A W A R D.

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of June 1983.