

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24808
Docket Number MW-24654

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Denver and Rio Grande Western Railroad Company

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

(1) The Agreement was violated when, on September 15, 16, 17, 18, 19, 22, 23 and 24, 1980, Rock Subdepartment employes were assigned and used to perform Track Subdepartment work between Mile Post 141 and 145 on the Craig Branch (System File D-27-80/MW-5-81).

(2) Because of the aforesaid violation, furloughed Track Subdepartment Employes J. Gonzales, S. P. Schoening, C. Beasley, Jr., P. S. Enriquez, F. Corral, R. Grimaldo, J. L. Steel, W. T. Freeland, A. Rodriguez, J. Rayfield, R. D. Blank, D. K. Meenen and R. L. Weiss each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours (208 hours straight time and 25-1/2 hours overtime) expended by Rock Subdepartment employes in performing the subject track work."

OPINION OF BOARD: The case before us raises two basic issues:

1. Was the Controlling Agreement violated when Carrier assigned Rock Subdepartment forces to install C. V. plates and chair braces on trackage between M.P. 141 and M.P. 145 on the Craig Branch?

2. If so, what is the appropriate remedy?

In defending its petition the Organization contends that the work properly belonged to the Track Subdepartment and Rules 1, 2, 3, and 4 of the Agreement were accordingly violated when Carrier assigned this work to the other employes. In particular, it asserts that Rules 2 and 3 explicitly delineate the functional classes of the respective subdepartments and avers that the rules unmistakably assign this work to the Track Subdepartment. It argues that Carrier has not offered any concrete verifiable evidence that the work in question was performed by the Rock subdepartment forces and maintains that seniority rights are confined to employes in a specified subdepartment. It contends that the fundamental protective purpose of collective bargaining would be vitiated if Carrier were permitted to avoid assignment obligations under an ambiguous non-exclusivity argument. Moreover, the Organization asserts that Carrier additionally violated the procedural evidentiary requirements of the grievance appeals process when it attached Exhibit I to its ex parte submission, since it was not produced on the property during the claim's handling.

Carrier contends that the past practice on the property has been to permit employes of the Rock Subdepartment to assist section employes, especially when the work load of the Rock Subdepartment forces has been light. It avers that the Organization cannot claim exclusivity to the disputed work by any clear and persuasive demonstration that the cited rules provide such exclusivity, and argues that the named beneficiary claimants in the Organization's document designated "Attachment A" cannot legitimately claim

listing the names of the purported claimants were inconsistent with official personnel records, but Carrier did not respond to the Organization request to review the records. The Organization made this request in its February 19, 1981 appeals letter. By any standards of appeals propriety, we believe that Carrier's compliance with this request might have clarified and/or resolved the claim to everyone's satisfaction. This, of course, is a subjective extrapolation, but certainly not an unreasonable observation when the matter is objectively considered.

From the record, the Board finds that the Agreement was violated and some form of compensatory adjustment is justified, but it strongly feels that the penalty can best be worked out by the Organization and the Carrier respectively. Track Subdepartment employees who were adversely affected by Carrier's use of Rock Subdepartment forces on the claimed dates are entitled to compensation for loss of such work and Carrier shall make its records available to determine the eligible Claimants rightfully entitled to this work.

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

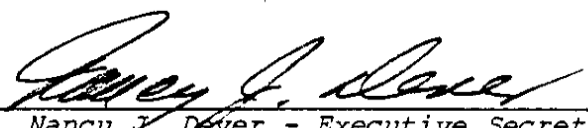
That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1984

JUN 1 1984