

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25443  
Docket Number MW-25402

M. David Vaughn, Referee

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employes  
( The Chesapeake and Ohio Railway Company

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

(1) The Carrier violated the Agreement when it assigned and used track forces instead of bridge forces to repair the turntable at Handley, West Virginia on June 3, 1982 (System File C-TC-1362/MG-3598).

(2) As a consequence of the aforesaid violations, Messrs. K. D. Brown, G. R. Hayes, H. B. Hunter, W. P. Steele, R. Adkins, D. E. Scarberry, C. W. Hanshaw and J. D. Cupp (Bridge and Building Force 1403) shall be allowed an equal proportionate share of seven and one-half (7-1/2) hours at their respective straight time rates.

OPINION OF BOARD: The Organization, on behalf of eight named Claimants who then comprised Carrier's Bridge and Building Force 1403, makes a claim for pay for time because work assertedly within the scope of jurisdiction of the Bridge and Building Craft was performed by Carrier's track forces.

On June 3, 1982, it became necessary to make temporary repairs to the ring rail of the turntable at Hadley, West Virginia. Without those repairs, it would not have been possible to turn the 15-18 engines per shift which passed over the turntable, which would, in turn, have seriously disrupted Carrier's operations. The Carrier assigned the work of repairing the ring rail to its track forces, who completed the work using tools including a rail saw and rail drill.

The Organization filed a claim for the work, which the Carrier declined. The claim was then brought before this Board.

The Organization asserts that the Carrier's action violates the Scope provisions of the Agreement between them. Rule 66 (c) of the Agreement states in part:

"Bridge and structure forces will perform the work to which they are entitled under the rules of this agreement in connection with the... maintenance of...turntables."

The Organization asserts that the Scope provisions of the Agreement exclusively reserve the repair of the turntable ring rail to the Bridge and Structure forces. It argues that the Carrier did not demonstrate the existence of an emergency so as to justify noncompliance with the Agreement.

The Carrier asserts that Rule 66(c) must be read together with 66(b) of the same Agreement, which defines in similar terms the scope of work for the track forces. It states that section forces may lay rail or perform other track work on bridges or structures. The Carrier asserts that both Scope Rules are general and, under Board precedent, require proof that the employees asserting jurisdiction historically has had exclusive right to the work on a system-wide basis, proof which was not submitted by the Organization in the instant claim.

The Carrier asserts in addition that the work was assigned to and performed by track forces in response to the situation, which called for immediate action to prevent substantial interruption to the Carrier's operations, meeting the definition of emergency and thereby allowing the Carrier broader latitude in assigning employees outside normal jurisdictional lines.

It is self-evident that where a turntable is used 15-18 times per shift to turn locomotives, it is important to the Carrier's normal operations. There is seldom a backup turntable. Immediate repairs would be necessary should the turntable malfunction.

The Board holds that an emergency situation existed as a result of the turntable malfunction, that the Carrier sufficiently asserted the existence of an emergency on the property below, and that, under Board precedent, the Carrier was authorized, to the limited extent of the temporary repairs described in the record on the property, to suspend that portion of the Scope Rules which might have precluded the track forces from performing the ring rail repairs. See Third Division Awards 20527 (Emergency defined as "...an unforeseen combination of circumstances which calls for immediate action..."); 17795.

The Organization does not assert that the individual Claimants would have been able to perform the repairs immediately, since they were, at the time of the malfunction, performing scheduled work at a location some distance from the turntable. Rather, the Organization argues that Claimants should be compensated anyway, since it was the Carrier whose assignment made them unavailable. Having determined that an emergency existed, the Board is not persuaded. By definition, work scheduled in one location for an employee may preclude performance of unscheduled work by that employee in another location during the same period of time. The Board will not, in the absence of compelling language in the Agreement, require the Carrier to pay employees for emergency work performed by others during the time they were performing scheduled work. The Board is pointed to no such language in this case.

Having determined that an emergency existed so as to have allowed the Carrier to relax the jurisdictional restraints of the Agreement, it is unnecessary to determine whether the ring rail of a turntable is a structure or track work for purposes of the applicable Scope Rule or, if so, whether the jurisdictional history of such work indicates that the Bridges and Structures Craft was exclusively entitled to perform it.

Accordingly, the Board must, and it hereby does, deny the claim.

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:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.