

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26193
Docket Number MW-26227

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Union Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned Track Subdepartment forces instead of Bridge and Building Subdepartment forces to remove and replace twenty-four (24) prefabricated crossing planks in a thirty-two (32) foot grade crossing at Victoria, Kansas on November 14, 1983 (System File 4-14-13-14-54/013-210-8).

(2) Because of the aforesaid violation, furloughed Kansas Division Bridge and Building Subdepartment Carpenters S. E. Milleson and S. Ricks shall each be allowed fifteen (15) hours of pay at the Group 3 Second Class Carpenter's straight time rate."

OPINION OF BOARD: On November 14, 1983, the Carrier assigned Kansas Track Subdepartment Employees from the Carrier's Hays and Wakeeney Sections to remove some 24 prefabricated crossing planks on the South Elevator track at Victoria, Kansas and then replace the same planks after work was accomplished on the track. A Claim was filed on January 9, 1984, on the part of the Claimants, at that time furloughed Kansas Division Bridge and Building Subdepartment carpenters, on the grounds that the Carrier was in violation of various Rules of the Agreement because the work allegedly belonged to these carpenters. It took 6 Track Department employees about 2 1/2 hours to remove the planks and 2 1/2 hours to reinstall them. The Claim is, therefore, for 30 hours "... for the loss of work opportunity ... suffered (by the Claimants) on November 14, 1983."

The Claim was denied by the Carrier on the grounds that there was no installation and renewal of plank crossings at this site, which is normally work reserved to B & B forces, and that the work was done at a point and at a time where B & B forces were not available at this outlying location.

The Claimants as petitioners in the instant case have the burden of proof to show that the Agreement was violated by the Carrier when it used track rather than furloughed B & B carpenters to do the work at bar (Second Division Awards 5526, 6054; Fourth Division Awards 3379, 3482).

The record shows that the nearest B & B gang on the day in question was at Oakley, Kansas which was some 98 miles away from the Victoria, Kansas site. In its declination letter dated August 14, 1984, the Carrier also stated that one of the Claimants to this case resided some 280 miles away from

the site where the planks were removed and replaced, and the other Claimant was some 90 miles away. Absent dispute of these facts by the Organization it is the position of the Board that the following provisions of Rule 13(I)(b) of the Agreement applies:

"At outlying locations where regular Bridge and Building forces are not available, the installation and renewal of plank crossings may be allocated to track forces with the understanding that one or two detached carpenters will be utilized to handle primarily the carpentry work, drilling, cutting, etc."

The record shows that there was no need for drilling, cutting, or other carpentry work since the planks which were removed in order to permit the track work were simply reinstalled.

Absent evidence of record that these provisions of Rule 13, or any other Rules of the Agreement, including the Scope Rule were violated the instant Claim cannot be sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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

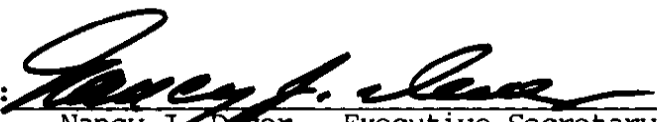
That the Agreement was not violated.

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 24th day of November 1986.