

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26453
Docket Number MW-25895

George S. Roukis, Referee

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

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

(1) The Agreement was violated when it assigned or otherwise permitted Carrier Officers (B&B Supervisors, Trainmasters, Claim Agents, Carmen Supervisors, Welding Supervisors, etc.) to pick up and load scrap and debris at Pocatello, Idaho (Idaho Division) on March 3, 1982 and at Albina (Barnes) Yard (Oregon Division) on March 30, 1982 (System Files 7-26-13-14-54 and 4-15-13-14-54).

(2) Furloughed Idaho Division Sectionmen T. H. Jones, A. Rodriguez, B. G. Burdick, C. W. Knapp, L. Rand, B. E. Johnson, C. W. Smith, R. V. Paohi, J. M. Lopez, P. Gonzales, J. Jarmillo, M. F. Bosquez, R. P. Steiner, G. M. Coon and T. L. Christensen and furloughed Oregon Division Sectionmen C. G. Boatwright, J. R. Cooper, R. M. Heintz, A. L. Steele, R. W. Shipley, D. W. Heaton, E. L. Zink, B. R. Hathaway, C. C. Dehoyas, T. A. Stewart and C. A. Keifer shall each be allowed eight (8) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: In this dispute, the Organization contends that Carrier violated the Agreement when Carrier officers cleaned scrap and debris from the right of way at two locations on separate dates.

It asserts that Rule 9 clearly places this work within the scope of the Agreement and its performance by non-Agreement covered personnel constituted a violation.

Rule 9 reads as follows:

"RULE 9. TRACK SUBDEPARTMENT

Construction and maintenance of roadway and track, such as rail laying, tie renewals, ballasting, surfacing and lining track, fabrication of track panels, maintaining and renewing frogs, switches, railroad crossing, etc., repairing existing right of way fences, construction of new fences up to one continuous mile, ordinary individual repair or replacement of signs, mowing and cleaning right of way, loading, unloading and handling of track material and other work incidental thereto shall be performed by forces in the Track Department."
(Emphasis added)

It also cited Rules 1, 2, 3, 4, 15, 16, 19, 20 and 23 as controlling herein. It avers that in the absence of a conclusive showing that other crafts customarily performed this work, it was obligatory upon Carrier to recall the furloughed Claimants in accordance with Rule 23(a). It notes that in the past the Sectionmen were used exclusively to keep the trackage clear and safe.

Furthermore, as to the procedural issue raised by Carrier, namely, that the petition progressed to the Board claimed relief for incorrectly identified employees, the Organization maintains that this was an inadvertent transposition of names which does not vitiate the integrity of the petition. It points out that Claimants were specifically identified by name and Carrier was fully mindful of their identity.

Carrier contends that notwithstanding the Organization's correction of the original Notice of Intent filed with the Board under date of June 28, 1984, the corrected copy submitted on July 29, 1984, was issued well beyond the June 29, 1984, expiration date. Consequently, the petition is untimely and invalid.

As to the substantive merits of the Claim, Carrier argues that no one class or craft has an exclusive right to remove scrap and debris from trackage and surrounding areas. It asserts that it apprised the Organization that in Terminals or Yards employees of several crafts have a housekeeping responsibility. It notes that in this case, the local Management embarked on a concerted campaign to clean up Barnes Yard at Albina, Oregon, and the Rail Yard at Pocatello, Idaho, which was aimed at improving the appearance of the two Terminals.

It maintains that user Departments have been traditionally held responsible for keeping their designated areas clean and observes that Clerical, Mechanical and Track Subdepartment employees have performed such work without disagreement. It acknowledges that two Sectionmen had been assigned at Pocatello to clean the Yard, but asserts that no Sectionmen has been exclusively assigned Yard cleaning duties. On March 3, 1984, it notes that a Section Foreman and two Sectionmen assisted in the concerted clean up.

In considering the procedural aspects of this case first, we concur with the Organization's position that the Claim is properly before us. We find Carrier's arguments on this point without foundation or plausible logic. The inadvertent transposition of names was plainly a mistake and not prejudicial to Carrier. It would be ludicrous to contend that this minor non-substantive error voided the original petition filed in timely fashion. On the other hand, we are compelled to agree with Carrier on the substantive merits, since we find no clear evidence that the Agreement, particularly Rule 9, was violated. There has been no showing that Rule 9 applies to Terminal trackage or Yard track or that systemwide, Sectionmen exclusively performed this type of work at similar-type locations. To be sure, the Organization did note that two Sectionmen at the Pocatello site exclusively performed this work, but this assertion was not buttressed by hard indisputable proof. Letters from Sectionmen and/or other craft employees would have been helpful here.

As to the other Rules cited by the Organization, we find no evidence that said Rules were violated by Carrier's action and, accordingly, we must 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. Bever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.