

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Soo Line Railroad Company

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

(1) The Carrier violated the Agreement when it assigned an assistant roadmaster instead of a foreman to provide protection for outside forces and their equipment spreading weed killer from Gladstone to Rexton on May 25, 1985 (System File R218 #1506G/800-46-B-210).

(2) Foremen K. Ploof, C. Martin and L. F. Gould shall each be allowed four (4) hours of pay at their respective time and one-half rates because of the violation referred to in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On May 25, 1986, Carrier assigned an Assistant Roadmaster (not covered by the Agreement) to pilot outside forces and their weed spraying equipment from Gladstone to Rexton. This assignment took 12 hours to complete and crossed three section territories. The Organization contends that the work of piloting weed spraying equipment belongs to the Section Foreman and cannot be performed by Supervisory personnel to the exclusion of Agreement-covered Foremen.

Since the work in question was performed on a Saturday (May 25, 1985), the Organization cites Rule 14, Section (i), as its authority in this instance. That Rule reads as follows:

"(i) Work on Unassigned Days. Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours or (sic) work that week; in all other cases by the regular employee." (Emphasis added)

The Organization contends that the three Claimants piloted the weed sprayer in their territories the week before and the week after Saturday, May 25, 1985. They were the regular employees, as specified in Rule 14(i), and, as such, should have been called to pilot the weed sprayer in their territory. Carrier has no authority to utilize a Supervisor in place of a Foreman for the piloting of the weed sprayer. The Organization also lodged a procedural claim contending that Carrier did not properly respond to the Claim during the grievance procedure. It argues that the Claim should be sustained on that basis alone.

Carrier, on the other hand, contends that the Assistant Roadmaster, as well as other Supervisors and members of other crafts, have been used as pilots for such equipment in the past. No contract violation has taken place in this instance. Further, the procedural violation claimed has already been rejected twice on this property.

This Board has reviewed the record and has concluded that the Assistant Roadmaster, as well as other Supervisory employees, can be assigned to pilot the weed sprayer as the Carrier deems appropriate. The issue here is not whether an Assistant Roadmaster can pilot the equipment but whether he can be assigned to do it on a Saturday when no Foremen are at work.

The Board concludes that the unassigned day rule does not apply in this situation. It also concludes that no procedural violation of a magnitude sufficient to support a sustaining Award exists. Based on the total record before it, the Board denies the instant Claim.

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 21st day of June 1990.