

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31133
Docket No. MW-31825
95-3-94-3-115

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when it assigned Track Supervisor R. Gutierrez to perform the work of oiling switches at the WR Tower in Granite City, Illinois at the Belt Lead at the Hookie Yard north of Neideringhouse Avenue and at the switch going to the N.S. tracks on December 8, 1992. (System File 1993-7/013-293-16)

(2) As a consequence of the violation referred to in Part (1) above, Claimant J. Wilson shall be allowed two (2) hours and forty (40) minutes' pay at the laborer's rate for the time expended by Track Supervisor R. Gutierrez in the performance of the work in question."

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 employee 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.

Carrier learned that several switches in the vicinity of WR Tower, Granite City, Illinois were hard to throw. It assigned a Track Supervisor to oil the switches. The Organization filed the instant claim contending that work of oiling switches has historically and traditionally been performed by members of its Craft on this property. Carrier defends against payment by raising several procedural arguments, and asks that the Signalman's Organization be joined as a third party. With respect to the merits of the Organization's claim, Carrier contends that the Scope Rule is general and does not establish systemwide exclusivity.

The Board has considered Carrier's procedural and jurisdictional arguments carefully. First, we do not find persuasive the argument that the Time Limits on Claims Rule was not followed by the Organization.

Second, Carrier's argument on joining the Signalmen's organization as a third party is misplaced. The disputed work was not assigned to a Signalmen, it was performed by a supervisor. Had the work involved in this dispute been assigned to Signalmen, then we would be faced with a claim from the Maintenance of Way Organization that work performed by members of the Signalmen's Craft should have been performed by members of the Maintenance of Way Craft. In such circumstances, we would have a classic case of two Organizations claiming the same work, the situation dealt with by the Supreme Court in TCEU v. UP 38 U.S. 157 (1966), and a Third Party notice would be appropriate, indeed would be necessary. However, the Board does not read TCEU v. UP as requiring a Third Party notice when the disputed work is performed by, supervisors, management personnel, outsiders or contractors. In the latter situation we do not have two Organizations contending that the involved work is theirs by tradition and contract, the basic situation dealt with in TCEU v. UP.

Carrier has also argued that the work was performed in emergency circumstances, it was done in the best interests of safety. Oiling switches is a common, everyday occurrence in the industry. In the circumstances present it is difficult for this Board to perceive that the work performed by the supervisor was such that it could not be assigned to Maintenance of Way or other craft employees on this property with ordinary dispatch. Carrier's emergency argument is not found to be persuasive.

With regard to the merits of the case, Carrier has said little except to contend that the Scope Rule does not reserve exclusive entitlement to perform switch oiling to members of the Maintenance of Way Organization. Other than this, it has not come forward with any examples of any other employees doing switch oiling work. Accordingly, it has not overcome the prima facie showing of the Organization that oiling switches was Maintenance of Way work. The claim will be sustained.

Finally, Carrier has argued that the task took but 20 to 30 minutes to perform. Even if that is all the time necessary to perform the work, if Claimant had been called, he would have received the pay sought in the Statement of Claim. Accordingly, the claim will be allowed for 2 hours and 40 minutes.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.