

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31269
Docket No. MW-30946
95-3-92-3-835

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)
((Southern Region)

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

- (1) The Carrier violated the Agreement when it assigned Train Engineer S. Bennett, Brakeman D. Bowling, Clifton Forge Yard Conductor R. Powell, James River Engineer R. Duncan and James River Brakeman D. Conner to perform Maintenance of Way work (brush cutting and greasing switches) between Mile Posts 329 and 331 on the Allegheny Subdivision near Fort Springs, West Virginia on October 29, 1991 [System File C-TC-8429/12(92-85) COS].
- (2) As a consequence of the violation referred to in Part (1) above, Claimants K. Gunter, L. S. Carper, J. W. Thomas, J. Wilson and E. Wykle shall each be compensated eight (8) hours' pay at their respective straight time rates."

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.

On October 29, 1991, the Carrier utilized Transportation Department employees as part of a Safety Committee to perform work between Mile Posts 329 and 331 on the Allegheny Subdivision near Fort Springs, West Virginia. Specifically, the work consisted of greasing main line switches, cutting brush and utilizing non Maintenance of Way employees to clean switches. The record on property indicates that subsequent to filing the claim by letter of November 11, 1991, the Carrier did not deny that the Agreement was violated.

In fact, the Board notes that the Carrier not only accepted that the violation occurred, but also did not dispute the remedy. The Carrier defended its actions as supported by prior Awards, stating that Safety Committees existed for approximately eight years and that:

"... all employees listed above in this claim, worked on October 29, 1991 and would not have been eligible for this service."

This Board carefully reviewed all Awards presented by the parties to this dispute. Third Division Award 26477 is not on point, in that it involved different work performed under largely unknown circumstances. This Board is guided by Third Division Award 30160, which is dispositive of this claim.

The Board holds that the Agreement has been violated, in that the Safety Committee performed brush cutting and greasing of switches which is work covered by the Scope of the Maintenance of Way Agreement.

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 1st day of November 1995.