

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31313
Docket No. MW-29876
96-3-91-3-245

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

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

- (1) The Agreement was violated when the Carrier assigned train service employes to perform flagging duties protecting the track structure in connection with work being performed by an outside contractor at Mile Post 187.00 in Salina, Kansas instead of assigning Track Foreman J. J. Paden thereto (System File S-271/90080).
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be compensated for all time worked by the train service forces continuing and in accordance with Rule 49(b)."

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.

As Third Party in Interest, the United Transportation Union was advised of the pendency of this dispute. It did not file a Submission.

During a period in 1989-1990, through a contractor, the State of Kansas and the City of Salina replaced a viaduct across the Carrier's main line. The Carrier assigned train flagging duties near the site to Trainmen represented by the United Transportation Union. Claimant holds seniority as a Group 8 Class A Track Patrol Foreman in the Kansas Division Maintenance of Way Track Subdepartment. The Organization asserts that the flagging duties should have been assigned to Claimant. The Carrier and the UTU argue that the assignment was properly made to Trainmen.

The test for determining the propriety of the assignment is to ascertain the "core" functions of the work. Public Law Board No. 164, Award 1:

"... (3) First Division Award 17169 persuasively presents a criterion for determining, in a situation somewhat like that here, whether the service of passing signals to road trains belongs to a trainman or to a section hand, namely what was the 'core', i.e., the main elements, of the work performed? To state the criterion somewhat differently, was the flagging the chief element or was it only incidental to (in connection with) other more important work. (4) This principle or criterion appears to have been followed by S.B.A. No. 592 in its Award No. 1, for in the last, 'punch' paragraph thereof that Board found that (a) the section hand therein 'had the duty only to give proceed signals to all trains when the track was clear' and (b) there was no 'Maintenance of Way service to be performed' or 'in progress'. This language can mean only that the flagging there was not only the 'core'; it was everything. (5) This Board in this case hereby adopts this 'core' criterion for application to the facts of record...."

Here, the record does not sufficiently establish that maintenance of way work was being performed. The work on the viaduct over the Carrier's main line was performed by a contractor hired by the State of Kansas and the City of Salina. The record sufficiently establishes that the flagging duties here were only to guide trains past the construction site. Under the above test, because the "core" duties were only the piloting of the trains past the construction site and because it has not been sufficiently established by the Organization that other maintenance of way functions were being performed, the Carrier properly assigned the work to the Trainmen.

The Organization's argument that maintenance of way functions were performed because of the need to protect the track from damage and the like are factually contested by the Carrier. Because the burden rests with the Organization to demonstrate the elements of its claim, we cannot say that it has carried that burden.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.