

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31607  
Docket No. MW-30844  
96-3-92-3-674**

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

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE:  
(Kansas City Southern Railway Company**

**STATEMENT OF CLAIM:**

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Roadmaster Gilcrease, instead of Section Foreman R. A. Norwood, to oil curves at Mile Post T-40 on February 15, 1991, at Mile Post T-1 on February 21, 1991, at Mile Post T-48 on February 26, 1991 and at Mile Post T-41 on March 12, 1991 [Carrier's File 013.31-365(52)].
- (2) As a consequence of the violations referred to in Part (1) above, Section Foreman R. A. Norwood shall be allowed twenty (20) hours' pay at his straight time rate."

**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.

The issue before this Board is the Organization's claim that a Carrier Roadmaster performed the work of oiling curves on Carrier's track, work which the Organization alleges belongs to its members, on the above named claim dates.

There is no dispute that on four occasions in February and March, 1991, Roadmaster Gilcrease performed the work of oiling curves at various locations on Carrier property. The Organization submitted a claim contending that Carrier had violated Rules 1, 2, 11 and 17 when it allowed a carrier official to perform work which "traditionally and historically" belonged to members of the Organization.

Carrier denied the claim maintaining that: (1) Claimants did not suffer any loss of work; (2) Carrier did not maintain time/work sheets which would indicate where Roadmaster Gilcrease performed service on the dates at issue; (3) oiling and greasing of track did not accrue exclusively to Claimants; and, (4) the Organization offered no evidence to support its claim.

In its reply to Carrier's denial, the General Chairman noted that numerous employees had submitted letters stating that the work of oiling track had "always" accrued to members of the Organization. Additionally, the Organization submitted dates, times and locations where the work in dispute was performed, information which Carrier did not dispute.

The uncontested documents submitted by members of the Organization, in conjunction with Carrier's lack of evidence to the contrary, are sufficient to establish a prima facie showing that the oiling of track is work which has historically been performed by covered employees. This case is in all material aspects indistinguishable from our decision in Third Division Award 31604 and for reasons set forth more particularly therein likewise is sustained.

### **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 29th day of August 1996.**