

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35563
Docket No. MW-32659
01-3-95-3-595**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Road Foreman M. Horvath, Yardmasters G. Flanley and D. Stout, Terminal Superintendent R. Joram, Conductor J. Hedmick and Safety Committeeperson McNulty to perform Maintenance of Way work (picking up debris along Conrail's right of way) along the former L&S from CP Allen to Mile Post 87, the West End Yard Lead to CP Allen and the West End of Allentown Yard on April 19, 1994 (System Docket MW-3560).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants S. Gober, A. Bubick, R. Mindler, W. Abraham, R. Calandra and R. Fogel shall each be allowed eight (8) hours pay at their respective straight time rates of pay.”**

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 were given due notice of hearing thereon.

In this claim, the Organization contends that the Carrier violated the Scope Rule, and Rules 1 and 17, on April 19, 1994, when members of so-called "Allentown Safety Committee" spent the entire day picking up debris in Allentown Yard and along a portion of Conrail's right-of-way. The record shows that in anticipation of a scheduled "Family Day," the Allentown Safety Committee, comprised of both management and labor members, had solicited volunteers from among various supervisors and employees to clean up the site where the public would be visiting. Because of this alleged violation, the Organization seeks for each of the six named Claimants damages in the amount of eight hours' pay at their respective straight-time rates of pay. Each of the Claimants was employed on the claim date and some of them were utilized to dispose of some of the debris collected by the Safety Committee members.

On Tuesday, April 19, 1994, each of the Claimants, with assigned hours 7:00 A.M. to 3:30 P.M., with Saturday and Sunday as rest days, was employed in the duties of his respective position in the Track Department at Bethlehem, Pennsylvania, as follows: S. A. Gober was assigned to Foreman position No. 05-040-4028-3265-4; A. E. Bubick was assigned to Lube Maintainer position No. 05-043-3624-3041-0; R. T. Mindler, Jr. was assigned to Vehicle Operator Log Loader position No. 05-024-3618-5911-4; W. J. Abraham was assigned to Machine Operator 2, Backhoe position No. 05-035-3604-5986-2; R. Calandra was assigned to Welder position No. 05-054-5962-3251-4; and, R. C. Fogel was assigned to Trackman position No. 05-042-3597-8715-4. The record shows that some of the Claimants were used to remove certain debris once it was identified by the Safety Committee members and other Conrail employees who participated in the clean-up effort. The original claim letter dated April 29, 1994, describes the gravamen of the alleged violations as follows:

"On the above stated date, the Allentown Safety Committee was picking up debris along Conrail's right of ways. This was in preparation for Conrail's Family Day, which Conrail would be showing various equipment parked on the single track from CP Allen to CP Canal. Conrail wanted the general public to see a clean area instead of a normal Conrail work site. The work performed by the Safety Committee was at the following locations:

- (1) Along the former L&S from CP Allen to Mile Post 87 and;
- (2) Along the West End Yard Lead to CP Allen and;
- (3) The West End of Allentown Yard.

Maintaining of the right of way work has customarily and historically been performed by BMW forces and is contractually reserved to them under the Scope Rule and Rules 1 and 17. Therefore, it is quite clear that the Carrier violated these rules when it assigned this work to the Allentown Safety Committee, who are comprised of various employees of other crafts, instead of assigning it to the Claimant's who were willing, available and qualified to perform this work.

This claim is being submitted against the following employees of the Allentown Safety Committee:

- (1) Mr. Mike Horvath - Road Foreman
- (2) Mr. Gene Flanley - Yardmaster
- (3) Mr. McNulty - Safety Committeeperson
- (4) Mr. John Hedmick - Conductor
- (5) Mr. Doug Stout - Yardmaster
- (6) Mr. Rick Joram - Terminal Superintendent

Since the Claimant's were willing, available and qualified for this BMW work but not offered this work opportunity by the Carrier, the Union has no other alternative but to file this claim."

The Carrier's final denial letter on the property, dated March 10, 1995 reads in pertinent part as follows:

"Our investigation has determined that there is nothing whatsoever to support your contention that Carrier 'assigned' the Allentown Safety Committee to pickup debris along Carrier's right of way. In fact the original claim admits that only a portion of the work was performed along the right of way. Work was performed in Allentown Yard, along the West End Lead outside to CP. Canal. This was organized by the Safety Committee, who invited all crafts to participate in cleaning the area and removing any safety or tripping hazards prior to Family Day. Safety Committees across the property have organized similar clean-ups system wide.

The removal of debris is not exclusive to the BMW. We have determined that the debris consisted of trash, wood, MW debris, brake shoes, batteries, tires, pieces of freight cars, sofas, tricycles, and dunnage among other things.

We have further determined that only approximately 10% of the work was MW related, and that contrary to your allegations, BMW employees, from both the Track and B&B Departments, did take part in the clean up, and performed any MW related work.”

On the basis of the record developed on the property, the Board concludes that the Organization failed to carry its burden of proving the allegation that the Allegheny Safety Committee individuals not covered by the BMW Agreement performed eight hours worth of Scope-covered work on April 19, 1994. However, the Carrier conceded that they did perform approximately 48 minutes worth of such work. Thus the claim of contract violation is sustained, but the money damages claimed by the Organization are plainly excessive; although we do not consider the violation or the injury to the Claimants de minimus. As remedy for the proven violation of the Scope Rule, the Carrier is directed to reimburse each named Claimant for three-quarters of an hour at his respective overtime rate of pay for the lost work opportunity on April 19, 1994.

AWARD

Claim sustained in accordance with the Findings.

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 24th day of July, 2001.