

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36115
Docket No. MW-33953
02-3-97-3-381**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Track Supervisor J. Elhers, instead of Track Foreman R. Underwood, to perform the work of applying grease to the rail on the Fall City Subdivision beginning February 26, 1996 and continuing (Carrier's File 960425 MPR).**
- (2) The Agreement was violated when the Carrier assigned Track Supervisor J. Elhers, instead of Track Foreman T. Bear, to perform the work of applying grease to the rail on the Sedalia and River Subdivisions beginning February 7, 1996 and continuing (Carrier's File 960423).**
- (3) As a consequence of the violation referred to in Part (1) above, Track Foreman R. Underwood shall be allowed eight (8) hours' pay at this straight time rate for each date Track Supervisor Elhers performed the work described in Part (1) above beginning February 26, 1996 and continuing until the violation ceased.**
- (4) As a consequence of the violation referred to in Part (2) above, Track Foreman T. Bear shall be allowed eight (8) hours' pay at his straight time rate for each date Track Supervisor Elhers performed the work described in Part (2) above beginning February 7, 1996 and continuing until the violation ceased.”**

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.

These claims both raise a scope coverage issue arising out of the use of new technology by a Track Supervisor to perform the work in controversy. It is undisputed that the Scope Rule of the Agreement prohibits the use of supervisory forces above the rank of Foreman to perform scope-covered work.

Claimant R. Underwood is assigned to Greaser Gang No. 1851. Claimant T. Bear is assigned to Greaser Gang No. 1715. According to the claims and appeals on the property, each gang is a one-man gang whose specific duties are "... maintaining, filling, repairing, replacing, installing, removing and adjusting all rail lubricators, and lubricating all switches on the ..." Eastern and Omaha Divisions.

Aside from the lubrication of switches, which is not part of the instant dispute, the foregoing duties all relate to wayside greasers. They are stationary pieces of equipment that are fastened to the rail and grease the rail for up to seven miles in each direction. They dispense lubricant onto the rail to be spread in each direction by the wheels of passing trains. The greasers are commonly located on curves to reduce friction wear. The Claimants are responsible for keeping the greasers filled and working properly.

According to the Carrier's unrefuted assertions, the Claimants still perform all of the foregoing duties. The claims do not contend that these specific duties have been removed from the Claimants, nor do they contend that non-Agreement personnel are also performing these specific duties.

The claims arose when the Carrier began having its Track Inspectors use a new Hy-Rail type of vehicle for performing their inspections. As it is driven over the track surface, the vehicle simultaneously applies lubricant to the entire track surface. According to the Carrier's initial denials, which were not refuted on the property, there was "... no position on the former Missouri Pacific that covers this new vehicle." The purpose of this lubrication is to achieve fuel savings and is not intended to replace wayside lubricators.

The various Rule violations cited by the Organization do not explicitly reserve track lubrication work to Agreement-covered employees. Indeed, the subject work is nowhere mentioned in their respective provisions. It is well-settled that absent such specific terminology explicitly reserving work, as is the case here, scope coverage must

be proven when placed in issue. It must be established by probative evidence demonstrating that the disputed work has been performed regularly, historically and customarily by Agreement-covered personnel. No such evidence exists on this record.

Notwithstanding, the Organization contends that scope coverage has been recognized in several prior Awards of the Third Division. Our review of those Awards, however, reveals that they all pertain to a different carrier. From the text of the Awards, it is apparent that other carriers had different work practices. For example, in Third Division Award 29036, the Board recognized the evidentiary record to contain "... numerous letters presented by the Organization detailing the historical work performed by the employees in applying oil to rails and curves. * * * We find that the signed letters support the Organization's claim. They are unrefuted by the Carrier."

Given the state of the instant record, we must find that scope coverage of the disputed work has not been proven. Accordingly, the claims must be denied.

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 22nd day of July 2002.