

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37827
Docket No. MW-38526
06-3-04-3-511**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation (Amtrak) –
(Northeast Corridor

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed to call and assign Messrs. J. Gellock, T. Mulrooney, J. Nadeau and H. Cousins to perform Maintenance of Way overtime work (pick up scrap and general clean-up work) at the New Haven Maintenance of Way Base at Hamden, Connecticut on April 10 and 11, 2003 and instead assigned Managers G. Stafford, G. Fitter and IAM Mechanics F. Tabicus and J. Bartoshevick (Carrier's File NEC-BMWE-SD-4365 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Gellock shall now be compensated for all hours worked by Manager G. Stafford on April 10, 2003 and Claimants T. Mulrooney, J. Nadeau and H. Cousins shall each be compensated for sixteen (16) hours pay for April 10 and 11, 2003.”**

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.

This claim seeks compensation for housecleaning work performed by Supervisors and IAM Roadway Mechanics during the ongoing general clean-up of the New Haven Maintenance of Way Base. The work in dispute includes gathering and dumping miscellaneous track materials (OTM) into a front end loader operated by a BMW-represented employee, and old machinery and parts used by IAM Roadway Mechanics into another loader operated by one such Mechanic, for appropriate disposal or storage, as well as picking up trash. The record reveals that the general clean-up of the base involved employees from many different crafts, including the BMW. The Claimants are Trackmen and EWE Operators assigned to Gang S-145 with a tour of duty from 8:30 P.M. to 6:30 A.M. Sunday through Wednesday. The claim dates fall on the Claimants' rest days.

The Organization argues that the work in dispute is expressly reserved to BMW-represented employees in the Scope and Work Classification Rules as well as Side Letter No. 1, that it is generally recognized as work belonging to the BMW-represented employees, and that its assignment across craft lines or to Supervisors with no seniority rights violates the Agreement, citing Third Division Awards 31085, 31358, 31360, and 35529. It asserts that the Carrier cannot use a "housekeeping committee" to perform work contractually belonging to the Claimants, relying on Third Division Awards 31269, 31565, and 35563. The Organization contends that practice cannot defeat clear and unambiguous Rules, and it is not obliged to prove exclusivity, citing Third Division Awards 22214, 27484, 28185, and 30786. It requests that the Claimants be paid for their lost overtime work opportunity.

The Carrier contends that the disputed work was not right-of-way clean-up work, but was performed at the Base facility, and is not covered by Side Letter No. 1. It asserts that this was nothing more than housekeeping work which was a clean-

up effort that all crafts participated in, and which did not belong to any specific craft by either Agreement or practice, relying on Third Division Awards 26453, 27291, 31254, 33394, and 35858. The Carrier asserts that it is not the equipment used, but the work performed, that determines the applicability of the Scope Rule, citing Second Division Award 7735. Finally, the Carrier argues that the Organization's failure to prove that the work is exclusively performed by BMW-represented employees or that the Claimants ordinarily and customarily performed this work must defeat this claim, citing Third Division Awards 28263, 28794, 29887, 32018, 32272, and 37006.

A careful review of the record convinces the Board that the provisions of the Scope and Work Classification Rules, as well as Side Letter No. 1 relied upon by the Organization as clear evidence that the work in issue belongs to the Claimants do not support such contention. Those Rules specifically relate to right-of-way clean-up and maintenance work. See Third Division Awards 31477 and 35529. As noted by the Carrier, the work in dispute was housekeeping work being performed as part of a general clean-up of the Maintenance of Way Base, not the track or right-of-way. It is admitted that many crafts, other than the IAM and BMW, participated in this general clean-up of trash in their areas and the sorting and disposal of OTM and scrap, and that supervision was also involved. The fact that some equipment was used to move the OTM for storage or disposal does not automatically bring the underlying work within the confines of the Scope Rule. See Second Division Award 7735. In the absence of a showing that this type of work was either specifically reserved to the Claimants or generally recognized as maintenance of way work, the claim must be denied. See Third Division Awards 29887 and 37006.

AWARD

Claim denied.

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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 21st day of June 2006.