

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NORFOLK & WESTERN RAILWAY COMPANY

Case No. 64

Dispute - Claim of the System Committee that:

1. The Carrier violated the Agreement on October 25, 1988, when it assigned a crew covered under the scope of the Wabash Agreement to gauge track and change rail at Van Loon and Osborn, Indiana, which is located on the territory covered by the Nickel Plate Agreement (File MW-CHIC-88-190)
2. Claimants Max Ish, L.F. Goble, J.W. Crow, K.E. McFarling and R.A. Edwards shall each be compensated eight hours at their respective straight time rates of pay.

Findings:

Claimant Max Ish has established and holds seniority as a foreman while the remaining Claimants have established and hold seniority as trackmen. All were in a furloughed status when the incident involved here occurred. On October 25, 1988, the Carrier assigned employees covered by the Wabash Agreement to gauge track and change rail at Van Loon and Osborn, Indiana, which is located on the territory covered under the scope of the Nickel Plate Agreement dated February 1, 1951.

The Organization asserts that Claimant was fully qualified and readily available to perform the work in question and that Carrier deprived Claimant of the opportunity to perform work to which they were entitled pursuant to their seniority under the Agreement. The claim was denied and has resulted in the dispute being placed before this Board.

This Board has thoroughly reviewed the record in this case and we find that at the time of the incident in question the Carrier was faced with an emergency situation. Certain yard tracks were taken


out of service due to track conditions and those yards were needed later in the day to interchange traffic. Those track repairs had to be done immediately.

On that date there were two Nickel Plate gangs working in that seniority district but both had begun work on a project replacing the 96th Street turnout. The Record reveals that that work could not be suspended to allow either of the gangs to make the repairs that were necessary. The Claimants were on furlough and could not easily be reached.


Consequently, in these limited circumstances, given the nature of the emergency situation faced by the Carrier, the Carrier did not violate the Agreement when it allowed the Wabash employees to perform work which is within the scope of the Nickel Plate Agreement. As the Organization points out, since Rule I reserves the work in that seniority district to the Nickel Plate employees, under normal circumstances, there would have been a violation under this set of facts. However, given the nature of the emergency, and the fact that all of the Claimants were off on furlough, this Board must find that the Carrier did not act in violation of the Agreement.

Award

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: 3-28-90