

Award No. 10

Case No. 2

Docket No. MW-1083

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Illinois Central Gulf Railroad

Statement of Claim

1. The Carrier violated the Agreement when on October 12, 13, 14, 15, 16, 19, 20, and November 3, 4, 5, and 6, 1976, it assigned other than a Maintenance of Way Employee to perform flagging work related to a track construction project.
2. Trackman James E. Miller be allowed eight (8) hours' pay at his straight time rate for each of the other dates referred to within Part (1) of this claim.

Findings

The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated January 23, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The U. S. Army Corp of Engineers in the course of building a waterway between the Tennessee-Tombigbee Rivers decided that it would be necessary to reroute a section of track of the Illinois Central Gulf Railroad. The change was to commence at Milepost 17. The Division Engineer was requested to provide a railroad employee to give flag protection so the trains would not strike the construction equipment working alongside the track. The new roadbed was being built by outside forces who were used to relocate approximately 600 feet of the track within the section territory assigned to Section 85. The Division Engineer concluded, because of the potential danger of construction equipment being hit by trains and train movements being slowed by such construction equipment working alongside the track it would be better to use a trainman rather than a trackman to perform the flagging. Accordingly, a trainman was assigned to the flagging on the days that the construction on the roadbed occurred.

Thus, the issue raised here in whether flagging is the exclusive right of the Brotherhood of Maintenance of Way Employees.

Here, the burden of proof rests with the Employees to come forth with a rule in support of their contention, and this they have failed to do.

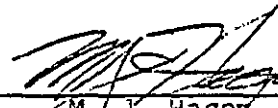
Consequently, as was pointed out in Third Division Award 18243 (Divine), where the Brotherhood of Maintenance of Way Employees had similarly argued, as here, that flagging belonged exclusively to members of their craft, but had failed to support such contention, held:

"....Here the Petitioner has presented no evidence whatsoever to support any contention that the work is exclusively reserved to M of W employees. Since petitioner has failed to present evidence that the work is covered by the scope of the Agreement we must deny the claim."

Also, see Third Division Award 17944 and First Division Award 17331. This Claim will be denied.

Award Claim denied.


John Palloni, Employee Member


M. J. Hagen, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, April 18, 1979.