

PUBLIC LAW BOARD NO. 1850

Award No. 21

Docket No. 58
BMWE File PITTS-E-1217
Carrier File 2-MG-1940

Parties	Brotherhood of Maintenance of Way Employees
to	and
Dispute	The Baltimore and Ohio Railroad Company
Statement of Claim	Claim filed on behalf of Foreman Anthony Mass, Pittsburgh East End Division, for all time made by Assistant Track Supervisor Walter Felgar while working with the Speno Rail Grinder at different points between Connellsville and Rockwood, Pennsylvania from July 18, 1977 through July 26, 1977.
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 October 27, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held. Carrier contracted with Speno Rail Services, Inc. to grind certain rail in order to remove rail head corrugations, rail end batter, rail head damage, etc., which existed along its main line from Connellsville to Rockwood, Pennsylvania on the Pittsburgh Division. As a result of the operation of the Speno Rail Grinder train, on the dates specified, the instant claim was

filed. The Manager - Engineering, on August 24, 1977, in denying such claim, in part pertinent here, stated:

"The carrier had a contract with the Speno Company to perform rail grinding on various tracks on its division. There was no work or service required or performed by engineering forces in connection with the contract. Assistant Supervisor Felgar acted in the capacity of an officer of the company to ensure compliance with the contract and monitor the quality of the work. He acted solely as a supervisor and a representative of management. The duties he performed were those normally assigned to supervision and reserved for management personnel and have never been assigned or performed by contract on agreement covered employees."

The Employees responded thereto:

"This is to advise Assistant Track Supervisor Felgar performed work claimant has performed as recently as January 31, 1976 and through February 20, 1977, when Mr. Mass was foreman on Speno Rail Grinder #3 from Confluence to Ohiopyle and west. Therefore, it is our position Rule 1 (d) of the current Agreement was violated in this instance inasmuch as there was a need to direct the work. We dispute Mr. George's statement that this work is reserved for management personnel and has never been assigned or performed by our members. Mr. Mass can perform the work, was available, is a Foreman, can make out the necessary reports and should have been used."

There is no dispute over the fact that the work which Carrier had performed by Speno was properly contracted out. Hence, without going into detail it is clear that the magnitude of the task performed by the Speno Rail Grinding Train, as well as the skills involved in the

rail grinding train's operation permitted of such work being contracted.

Thus, the sole issue here is whether Carrier's utilization of the Assistant Track Supervisor to accompany the Speno Rail Grinding Train while operating on Carrier's property represents a contractual violation.

Rule 1, - Classification -, cited by the Employees, reads:

"(d) Roadway and Track Work.

Work required in the construction and maintenance of the roadway and track and (except where now reserved to employees covered by other agreements) in the loading, unloading and handling of all kinds of material will be performed by track forces.

NOTE: The following work will be considered a trackman's work: Relaying and repairing of crossing plank, except at crossings planked so lid and requiring framing or fitting, temporary repairs to platforms, roofs, stockpens and other similar work required to be done at once to prevent damage to persons or property, painting of switch stands or other track appliances."

The Employees cited Third Division Awards 18808 in support of its contention. There, a Supervisor had operated a Group 1 machine in cleaning and draining tracks in Carbondale Yard. Such Award, of course, is inopposite to the facts involved in the instant case. We find that Section 1 (d) above does not support the allegation that the Assistant Supervisor had performed Claimant duties. Such is but a definition of the Scope of Trackmans work.

The record reflects the "Scope" as here involved states:

"(b) This Agreement does not apply to:

1. Track Supervisors and Assistant Track Supervisors.
Other supervisory employees of equal or higher rank.

5.(a) Work which is to be performed under contracts let by the Company under any one or more of the following circumstances:

1. By reason of the magnitude of the project.
2. Because of the requirement of special skills necessary in connection with performance of the work.
3. Where equipment or facilities to be used in connection with the work are not possessed by the Company and available, consistent with requirements for a particular project."

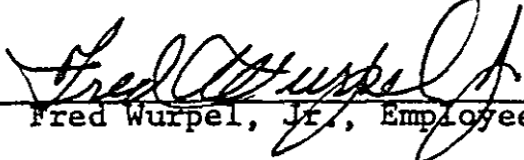
Carrier denied that there was an alleged practice of assigning a Foreman to Speno Rail Grinders. Such denial was not refuted. Therefore, we must construe the evidence in the light that such assertion is not supported.

Lastly, a review of the role played by the Assistant Track Supervisor indicates that such was of a managerial representative. His duties included, but were not limited to a determination whether the contract was being properly performed within the necessary number of passes being made with the Speno Rail Grinder equipment. He was checking the quality of the work being performed by the contractor. Also, he was available, if necessary, to authorize additional passes by the contractor. Lastly,

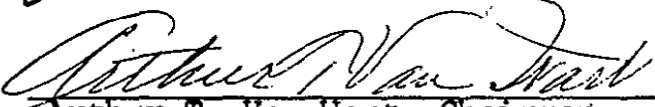
said Supervisor was there to insure that the contractor would perform the contract in accordance with the terms outlined therein. Therefore, such enumerated responsibilities and duties of inspection do not fall within the purview of the duties outlined in Rule 1 (d).

Consequently, we conclude that such circumstances impels a denial Award.

Award Claim denied.


Fred Wurpel, Jr., Employee Member


W. C. Comiskey, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, April 15, 1980.