

NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1

FOURTH DIVISION

Referee Irwin M. Lieberman

Award Number 4086
Docket Number 4021

PARTIES TO DISPUTE: Allied Services Division/ Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, AFL-CIO

Baltimore & Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (P-48) that:

1. The Carrier violated the current agreement, particularly Rule 1, 2, 28, and other related rules, when it assigned an investigation to Captain R. E. Jones, Supervisor of the Baltimore West Division, instead of assigning such work to a Patrolman.
2. The Carrier shall now be required to pay Patrolman E. M. Honaker for four (4) hours' pay at the punitive rate of February 7, 1980.

OPINION OF BOARD: This dispute involves the activities of a Captain Jones on February 7, 1980. On that date, the Captain, a supervisor, was notified that trespassers were dumping waste on Carrier property. He investigated the matter and went to the company who owned the vehicle involved and informed them that future similar activity would be prosecuted under the law. Petitioner contends that a Patrolman should have been called to perform the work in question. Rules 1, 2 and 28(g) provide as follows:

"RULE 1 - Scope and Work of Employes Affected

These rules shall govern the hours of service, rates of pay and working conditions of all employes engaged in the work of the craft or class of Patrolmen.

RULE 2 - Definition of Patrolman

Employes below the rank of Lieutenant or equivalent title shall be in the craft or class of Patrolmen and come within the scope of this agreement.

RULE 28 - Overtime

(g) Where work is required on an overtime basis, other than covered by paragraphs (d), (e) and (f) of this rule, regular assigned employes observing their rest day will be given preference in seniority order ahead of regular assigned employes working on that day. If there are no available employes observing their rest days then regular assigned employes working that day, who are available, will be called in seniority order."

The Organization takes the position that the work constituted surveillance, investigation and patrol work which is traditionally recognized as patrolmen's work and not that of a supervisor such as the Captain. It is contended that it is well recognized that supervisors outside the Scope of the Agreement should not perform the duties of a classification under the Scope.

Carrier argues that the Scope Rule is general in nature and further that Rule 2 merely indicates that employees below the rank of Lieutenant come within the scope of the agreement. It is contended also that the work in question was not reserved exclusively to patrolmen and was properly performed by the Captain, consistent with his responsibilities. It is noted also that there was no overtime whatever involved in this dispute and hence Rule 28(g) is not applicable. Finally, Carrier argues that the very issue herein has been determined previously by this Board, involving the same parties and agreement, in Awards 3913, 3914 and 3969; thus the matter should be disposed of on the basis of stare decisis.

The Board finds that the Scope rule herein is general in nature and furthermore no overtime was involved in this dispute. No evidence appears in the record to support Petitioner's contention that the work in question has been, by tradition and custom exclusively reserved to patrolmen. In addition, the basic issue herein has been addressed by this Board in the three cases cited by Carrier (supra) and continued litigation does not appear useful on the same point. There is no support for Petitioner's position either in the rules or the facts, therefore, the Claim must be denied.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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.

The parties to said dispute were given due notice of hearing thereon.

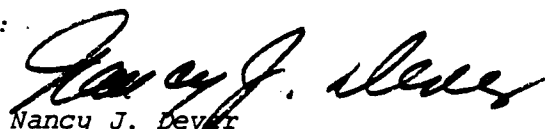
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim denied

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:


Nancy J. Levey
Executive Secretary