Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7906
SECOND DIVISION Docket No. 7765-T
2-SLSF-FO-'79

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 22, Railway Employes' Department, A. F. of L. - C. I. O. (Firemen & Oilers)
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employes:

1. That the Carrier violated the Agreement when on January 26, 27, 28, 29, 30, 31, February 16, 17, 18 and 19, 1977, it assigned, or otherwise permitted, a Maintenance of Way Employe to operate a Hoist Machine for the purpose of unloading and laying track panels and switching cars in and out of the track panel yard at the old west shop, Springfield, Missouri.

2. That accordingly, the St. Louis-San Francisco compensate Hoist Operator W. D. Murphy at his applicable Hoist Operator's rate of pay for an equal number of man hours as were expended by the Maintenance of Way Employee in performing the work referred to in Part (1) of this claim.

Findings:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Our review of the record indicates that while the Firemen and Oilers employes have jurisdiction over the Brown Hoist Machine, the operation of the American S.F. No. 918 was not specifically reserved to them and thus properly used by the Maintenance of Way Employees.

The type of work performed was Track Department work and under the supervision of the Division Engineer.

If a Brown Hoist Machine were used to perform this work, our conclusion would probably be different. But we cannot read into the Maintenance of Way Agreement an exclusion for another type of machine despite its functional similarity.

Admittedly, the record shows that claimants performed similar task assignments in the past, but the work in question did not exclusively accrue to them. It has been performed by others as well.

We recognize the gray areas that oftentimes exist in contested work assignments, but the evidence of record supports our finding of non-exclusivity. Accordingly, we are compelled to deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of April, 1979.