

Award No. 10829

Docket No. MW-9876

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it assigned other than Track Department employees to perform the work of removing snow from switches at various locations on December 18, 29, and 30, 1954.

(2) The three senior Section Laborers holding seniority on the territory where the work was performed each be allowed eight hours' pay at his respective time and one-half rate because of the violations referred to in Part (1) of this claim occurring on December 18, 1954.

(3) The senior Section Laborer holding seniority on the territory where the work was performed be allowed eight hours' pay at the time and one-half rate because of the violation referred to in Part (1) of this claim occurring on December 29, 1954.

(4) The senior Section Laborer holding seniority on the territory where the work was performed be allowed eight hours' pay at the time and one-half rate because of the violation referred to in Part (1) of this claim occurring on December 30, 1954.

(Note: Each territory has been identified in letter of claim presentation dated February 24, 1955.)

EMPLOYES' STATEMENT OF FACTS: On December 18, 29, and 30, 1954, the Carrier assigned its train service employees to perform the usual and traditional work of its Track Department employees. Specifically, the work consisted of removing snow from switches at various locations on the afore-mentioned dates. The work was performed by the train service employees during hours outside of the Claimants' regular assignment.

The Claimants, who were regularly assigned to the position of section laborer on the territory where the work was performed, were available and could have performed the above referred to snow removal work, but were not notified or called to do so.

All material data included herein have been discussed with the Organization either by correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose out of an unusual factual setting. On the 3 days involved, there was a total of 4.1 inches of snow fall in or near Carrier's Kirk Yard in Gary, Indiana (a complete terminal facility containing a classification yard of 58 tracks). This was equal in quantity to the total amount of snow which fell there the remaining 28 days of the month. The problem of keeping the switches clear of snow was compounded by high wind velocities, and it was under these conditions that the complained of work was performed.

The Carrier made extensive use of its track forces on the claim dates. It paid these employees for a substantial number of man hours at the punitive rate.

Taking all of this into consideration, we believe that the Carrier had the right to require other employees to participate in the work of keeping its switches clear of snow.

We agree with the Organization that work of this type usually belongs to section men; however, the general rule to that effect is subject to exceptions, and we believe that the claim at hand is subject to one of these: a bona fide emergency.

We quote with approval from Award 4593 (Referee Carter):

"We think that work in connection with keeping tracks and switches clear of snow ordinarily belongs to section men. **In emergencies, of course, section men may be augmented by other available employees . . .**" (Emphasis added).

Being convinced that the Carrier was confronted with an emergency, the claim before us must be denied.

Having reached this decision on the basis of the substantive merits, it is not necessary to resolve other issues presented by the parties.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1962.