

Award No. 11583
Docket No. MW-10716

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, 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 operate electric switch heaters used for the removal of snow from switches in Kirk Yard at Gary, Indiana.

(2) The senior available Section Laborer on the territory where the work was performed be allowed a call for each time the electric switch heaters were turned on and a call for each time they were turned off, retroactive sixty (60) days from January 29, 1957, because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Traditionally, the work of removing snow from switches has been assigned to and performed by the Carrier's Track Department employees in accordance with the Agreement rules and practices thereunder.

In 1952, the Carrier installed a number of electric switch heaters to remove snow, by the heat method, from switches in the Kirk Yard at Gary, Indiana.

In conference on December 19, 1952, December 22, 1952 and January 6, 1953, the undersigned General Chairman and the Carrier's Roadmaster, Mr. R. V. Dangremond discussed the operation of the above referred to electric switch heaters.

Under the date of January 6, 1953, the undersigned General Chairman advised Roadmaster Dangremond as follows:

"January 6, 1953

Mr. R. V. Dangremond
Roadmaster
Elgin, Joliet & Eastern Railway Co.
Gary, Indiana

tric switch heaters regardless of the fact that such an act results in the removal of snow.

The Organization put the Carrier on notice in 1953 that it was claiming the work of activating the electric switch heaters at Kirk Yard, but it did not pursue this claim or challenge the Carrier's position regarding the allocation of this work until 1957, four years after their original protest. This untimely delay, therefore, has established a bar to the Organization's present claim.

The Organization has presented a "blanket claim" in failing to specify the dates or frequency of the alleged violation making it impossible to determine the proper claimants.

In view of the foregoing, the Carrier asks that the claim in this case be declined in its entirety.

All material data relating to this case have been discussed with the Organization either in conference or in correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1952, Carrier installed approximately 101 electric switch heaters to remove snow from switches in the Kirk Yard at Gary, Indiana. These electric switch heaters are controlled by a master switch at Carrier's main electric substation at the yard. The operation of these electric switch heaters consists of pushing a button which activates a high voltage electric power line at the substation and the use of another set of buttons to control the degree of heat. The electric switch heaters were installed and are maintained by Signalmen.

In support of the claim that Carrier violated the applicable agreement by assigning other than Track employees to operate these electric switch heaters, the Employees cite the fact that in 1953 they asserted the right to such work, and make the following contentions: removal of snow from switches has been historically and traditionally assigned to and performed by them in connection with maintenance of track; by Memorandum of Agreement dated September 28, 1949, the parties recognized that the removal of snow from switches either manually or through the heat process belonged to the Maintenance of Way employees; and the work of operating the electric switch heaters is work of the character specifically reserved to Track employees by Rule 56 II (a) and (j) of the agreement.

We turn directly to the merits, for the reason that Carrier's "blanket claim" for unnamed claimants defense was not raised on the property (see Awards 10963, 10034, 10075, 10684); and its reliance on the doctrine of laches need not be considered in view of our conclusions.

The Memorandum of Agreement dated September 28, 1949 was entered into in connection with the operation of gas burning switch heaters for the removal of snow from switches. If, as claimed by the Employees, it is concluded that by this agreement the parties recognized that the removal of snow from switches either manually or through the heat process belonged to the Maintenance of Way employees, then, by the same token, it may likewise be argued that by the same agreement the parties also recognized that remote actuation of such heat process was not the work of those employees. That agreement expressly excluded remote actuation of the gas burning switch heaters at specific locations from the scope of the Maintenance of Way agreement.

In Award 9313, this Division said:

"It is well settled that it is not a violation of an Agreement to install labor saving equipment even though jobs are thereby eliminated. Awards 3051, 4063, 6416, 8656."

The electric switch heaters remotely operated and controlled in large numbers by push buttons are of such nature and their installation resulted in more than a change in the method of work even though the end accomplished remained the same. They substantially changed the character of the work formerly involved in the use of the earlier devices, such as gas burning switch heaters, and tools, such as brooms and shovels, for the removal of snow from switches. Pushing buttons to operate and regulate the electric switch heaters cannot be regarded as "work in connection with the construction, maintenance or dismantling of roadway and track . . . maintaining and renewing . . . switches . . . snow and sand fences; moving and cleaning . . . and all other work incident thereto . . ." within the meaning of Rule 56 II (a). See Awards 9313, 9333, 9611, 10059.

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 July 1963.