**Award No. 13083**
**Docket No. MW-12763**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

**Robert J. Ables, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

## DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement on Saturday, February 6, 1960 when, in lieu of calling and using a track laborer to perform work classifiied as track laborers' work, it assigned or otherwise permitted Section Foreman Henry Kochkas to perform such work.

(2) Track Laborer Anthony Galoski be allowed four (4) hours' pay at time and one-half rate because of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Mr. Henry Kochkas is the regularly assigned section foreman on Section No. 18, while Claimant Anthony Galoski is one of the track laborers regularly assigned to Section No. 18. This crew is regularly assigned to a work week of Monday through Friday, with Saturdays and Sundays as rest days (days not a part of any assignment for this crew).

On Saturday, February 6, 1960, Section Foreman Henry Kochkas worked from 12:00 Noon to 4:00 P.M., removing snow and ice from switches on Section No. 18. No effort was made on said date to call and use Claimant Galoski or any other track laborer regularly assigned to Section No. 18 to perform said work.

Claimant Galoski was available for and willing to perform said overtime service, but he was not called despite the fact that he is a regular subscriber for telephone service and has his telephone number and address listed in the telephone directory and also on file with the Carrier.

The claim was timely and properly presented and progressed on the property, the claim being disallowed at all stages of handling.

form laborer's work. To this end, Carrier directs your Board's attention to Rule 23, Composite Service. This rule provides that for employes working on lower rated positions the rate of pay will not be reduced. If a higher rated employe could not perform lower rated work, there would have been no need to incorporate that portion of Rule 23 into the agreement and this rule has been applied throughout the years and on many occasions.

It is generally understood and recognized that in the absence of a specific rule to the contrary, a foreman may be assigned to perform any of the duties of his craft. If as the Organization contends that the foreman cannot perform work contained within the working agreement, then these employes should be excluded from the provisions of the contract. They are not now or have never been in such a status.

In conclusion, the Carrier submits that it has been clearly shown in the foregoing that there is no substance to the claim of the Employes in this docket and that the proposition contended for by the Employes does violence to the basic meanings and purposes of the agreement rules.

The Carrier respectfully submits that the claim of the Employes in this docket be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The question here is whether the Claimant track laborer should have been called instead of the foreman to clear ice from the tracks on a rest day.

Limited to the argument on the property, the employes' essential case is that the laborer should have been called for the overtime work because the work of snow and ice removal is specifically reserved to him under the Classification Rule providing in Rule 29 (i):

> "(i) An employe assigned to performance of work in connection with construction, maintenance and dismantling of tracks, switches and maintenance of road bed, right of way, removal of snow, ice and other obstructions, shall be classified as a track laborer."

Rule 19 — Division of Overtime — is cited by the employes in support of their claim. This rule provides in the first two sections:

> "(a) An employe assigned to a particular job on which overtime is required will be given all the overtime connected with that assignment.
>
> (b) A record will be posted semi-monthly of all accumulated overtime worked in a calendar year and the men will be called for general overtime which will be divided as equally as possible subject to the ability of employes to perform the work. Each employe will only participate in overtime at the particular headquarters to which assigned."

Also limited to the argument on the property, the Carrier's essential case is that it is not unusual for section foremen to remove snow and ice from tracks and that there is nothing in the Agreement prohibiting the foreman from doing this work.

In effect, we are asked here to make the same kind of decision as between classes of employes in the same craft as this Board is continually asked to make as between employes in different crafts. In the craft problem, the Scope Rule is usually in issue; in the other, it is the classification rule. In each case, however, the question is usually the same: to what extent is the work reserved to one group of employes to the exclusion of others?

So much has been written in so many opinions on this vexing question that almost any proposition can be supported with authority and little new can be added. The answer has depended on the individual Board's assessment of the particularity of the rule in question and the history, tradition, custom and practice associated with the work in dispute.

In general, it now seems to be accepted that if a rule specifically describes work for a craft of employes, it will be assumed that the work belongs to that craft, to the exclusion of other crafts even if they are not specifically excluded from performing such work. Under these circumstances, the burden to show otherwise falls on the challenging party.

The more general the Scope Rule, the greater the reliance on history, tradition, custom and practice to establish job content and to whom the work belongs. The weight to be given to history, tradition, custom and practice in their separate meanings depends on the circumstances, with the burden always on the employes to show that the work belongs to them, but with the degree of burden varying with the strength of the experience on which they rely. The longer it has been accepted that work belongs to one craft of employes, the more it will require in the way of new conditions or practice to accept a different craft of employes either as being entitled to share in the work, or as supplanting the other group of employes. See Awards 10673, 10675, 10728.

These general principles have evolved over a long period of time to bring some order in a confused situation, not by interpretation of rules, but by analysis of existing facts, conditions and circumstances in each case to arrive at a fair judgment. It is not certain whether the absence of specific rules or the plethora of general rules on who is to do what work has created the difficulty, but it is certain that there are not clear guidelines on which to base such judgments — thereby leaving the determination open to diverse treatment depending on individual assessment of the problem.

Applying these thoughts to this case, it is apparent that the always troublesome jurisdictional disputes between crafts of employes are flowing over into disputes between employes of the same craft in different classifications. Although the railroads can hardly be classed as exemplary in labor relations with their employes, it does seem they are disadvantaged when the dispute is essentially between their employes and not between labor and managment. In such cases, they run the risk of paying twice for the same work. To the extent this condition exists, therefore, the burden of which we spoke before should be carried more heavily by the employes to sustain their claim.

We do not think the employes have carried that burden here.

While it is true the Classification Rule classifies one who removes snow and ice from tracks, switches etc., as track laborer, it does not follow that the foreman of that section in the same craft is prohibited from doing some of that work from time to time. The Carrier contends this is not unusual practice on this property and the employes concede as much. This is indicated

by the General Chairman who acknowledged exceptional circumstances when a foreman may do this work, to which he added with respect to this dispute:

> "It is not a recognized practice in the application of agreement rules for the section foremen to perform such work to the extent indicated in this instance."

If the foreman is not prohibited from doing this work, then the length of time he does it is not significant and it undermines the employes' contention that the work is reserved exclusively to track laborers.

The assignment of the foreman to remove ice and snow from the tracks on a rest day is further supported by the Division of Overtime Rule since general overtime work, as distinguished from overtime work on a particular job, is divided equally among all the employes covered by the Agreement.

The claim therefore should be denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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 23rd day of November 1964.