Award No. 13581
Docket No. MW-14932

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

WESTERN MARYLAND RAILWAY COMPANY

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

(1) The Agreement was violated when members of a Chesapeake & Ohio train crew were permitted to clean snow from this Carrier's track switches at Durbin, West Virginia, on February 13 and 22, 1963.

(2) Trackman Leroy Simmons be allowed sixteen (16) hours' pay at the trackman's straight time rate account of the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: Prior to January 1, 1963, a section gang was headquartered at Durbin, West Virginia. One of the duties of the employes assigned to that gang was to perform the work of cleaning snow from the Carrier's switches at that point. On January 1, 1963, the Carrier abolished that section gang.

On February 13 and 22, 1963, members of a Chesapeake and Ohio train crew consumed a total of sixteen (16) man hours in cleaning snow from the Carrier's switches at Durbin.

The claimant has established and holds seniority rights in the trackman's class on the territory where the subject work was performed. On February 13 and 22, 1963, the claimant was furloughed. He was available, willing and fully qualified to perform all of the subject work and would have done so if the Carrier had assigned him to it.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 16, 1945, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

The snow, wind and ice created an emergency. There is no showing that the maintenance of way men were not called on to perform their duty of clearing snow on the territory covered by this assignment. The work performed by claimants was only that necessary for carrying out their own assignment and must be held incidental to their service and properly required of them."

The Brotherhood is incorrect in its assertion that cleaning snow is work reserved exclusively to Maintenance of Way employes, and not the work of a train crew. The use of Maintenance of Way employes to clean snow from switches is dependent upon the amount of snow, weather conditions, and the necessity for assigning employes exclusively to the work of cleaning snow from switches. Instances may arise where it is desirable and necessary to the continuous operation of service to have Maintenance of Way employes assigned to keep switches open, but, on the other hand, there are many instances when Maintenance of Way employes are unavailable to do this work, and also many times when the train crews can handle this work themselves.

In this case the carrier has shown that:

1. The claimant was unavailable for emergency work.

2. The cleaning of snow from switches to permit passage of their own train is an integral part of a trainman's duties.

3. Train service employes of the Western Maryland Railway have customarily cleaned switches without such work being considered as in derogation of the Agreement of either the Maintenance of Way or train service employes.

4. Prior settlements on the property support the position of the carrier.

5. National Railroad Adjustment Board decisions have consistently held that train service employes may clean snow from switches in pursuance of their assigned work.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 1, 1963, Carrier abolished a section gang headquartered at Durbin, West Virginia. On February 13 and 22, 1963, members of a Chesapeake and Ohio train crew cleaned the snow from behind the switch points to enable them to throw the switches and yard their train at Durbin. Claimant, one of the furloughed section hands residing at Durbin, contends he should have been called and used on the dates in question to perform this work.

The Petitioner relies on the Scope Rule which is general in nature, of the kind we have repeatedly held does not grant an exclusive right to any work unless history, custom and practice supports such a right.

In reviewing the record as to history, custom and practice, it appears that Carrier took exception to Petitioner's claim that the work belonged to it on only two grounds, that trainmen had always cleaned snow from switches if incidental to the work of moving their own train or when emergency existed. It may, therefore, be said that the Carrier has conceded that the

work belongs to the Organization unless either of the two exceptions are proved. Carrier cites with approval Award 4948, which contains the following:

> "The Organization contends that the removal of snow is work which belongs exclusively to maintenance of way employes. With certain qualifications and exceptions, we think this is true. We have held, correctly, we think, that employes of other crafts may engage in snow removal when it is incidental to the work of their crafts.
>
> * * * * *
>
> It must be borne in mind, however, that snow storms in certain parts of the country become emergent when considered in connection with the movement of railway traffic. Under emergency conditions, snow removal cannot be delayed in order that it may be wholly performed by maintenance of way employes. The duration of such emergencies are unpredictable and available forces must be used with contingencies in mind which may never occur. Management is not required to guess correctly on such matters at its peril."

The record indicates that the Chesapeake and Ohio trainmen cleaned behind only those switches that had to be thrown to move their own train. Such work was clearly incidental to the work of their craft, and it is unnecessary, therefore, for us to decide whether these were, in fact, emergent situations.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 14th day of May 1965.