

Award No. 18519
Docket No. MW-18933

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

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

(1) The Agreement was violated on December 25 and 29, 1968 when other than B&B employees (Ore Dock employees) were required to heat and to thaw line shafts at the Two Harbors Ore Dock. (System Claim 10-69).

(2) B&B Sub-department employees F. L. Costley and L. W. Hendrickson each be allowed 10% hours of pay at their respective time and one-half rates because of the violation referred to in Part (1) hereof.

(3) The Carrier shall also pay the claimants six percent (6%) interest per annum on the monetary allowance accruing from the initial claim date until paid.

EMPLOYEES' STATEMENT OF FACTS: The claimants have established and hold seniority in Group (A) 4 within the Bridge and Building Sub-Department on the Iron Range Division with an assigned work week extending from Monday through Friday. The ore dock employees who were assigned and used to perform the work in question do not hold any seniority under the provisions of the Agreement controlling in this dispute.

The factual situation here involved is partially described in a letter of appeal reading:

LETTER "A"

"May 13, 1969

Mr. R. B. Rhode, Chief Engineer,
Duluth, Missabe & Iron Range Railway Co.
Wolvin Building
Duluth, Minnesota 55802

Claim No. 10-69

by an available extra or unassigned employe who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employe."

Rule 29
Classification of Work

* * * * *

"(c) An employe assigned to construction, repair, maintenance or dismantling of buildings, bridges or other structures, including the building of concrete forms, erecting falsework, setting of columns, beams, girders, trusses, or in the general structural erection, replacement, maintaining or dismantling of steel in bridges, buildings or other structures and in the performance of related bridge and building iron work, such as riveting, rivet heating, or who is assigned to miscellaneous mechanics' work, shall be classified as a bridge and building carpenter and/or repairman."

A copy of the correspondence involved in the handling of the claim on this property is attached and marked as Carrier's "Exhibit A."

(Exhibits not reproduced.)

OPINION OF BOARD: On the dates set forth in the Claim, it became necessary to apply heat to the gear box to render the grease liquid on the line shaft which unwinds or winds a cable used to raise or lower ore dock chutes. The work was performed by ore dock employes covered by another Agreement who were available on their normally assigned shifts on these dates.

The claim rests on Rule 14(k), although violation of Rules 1, 2 and 29 are also cited by the Petitioner in support of its position. The Board in the first instance will examine the claim as it relates to Rule 14(k) and the requirements which it places upon the Carrier. Its text follows:

"Rule 14

40-HOUR WORK WEEK

(k) Work on Unassigned Days

Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employe."

The record before us indicates that resolution of the dispute rests on a determination of which, if any, group of employes have established as fact, by competent evidence, that they are regularly employed on the assignment performed on the date in question and that those were "unassigned" days within the meaning of the Rule involved. The latter question, on the record, is not in issue.

With respect to this rule and its application, the Petitioner raises the question of exclusivity of assignment and, of course, rebuts this requirement in its arguments and a series of cited Awards which appear to support that rebuttal. The Carrier rejects this argument in defense of its position and relies on the construction of the language, "regular employee," asserting that there was no regularity of assignment to either group of contending employees.

There is a difference, we believe, in a claim for "exclusive" jurisdiction over a type of work to be assigned, which would involve construction and application of many other rules in the agreement, and a determination of "regular employee" for purposes of a ruling in the instant case. We believe the latter rule, alone, to be at issue here.

In addition, the Petitioner advances the argument that the work performed was maintenance work, reserved to B&B employees under Rule 29(c). This would urge that applying heat to the line shaft journal boxes to make them operative was maintenance work within any accepted definition or practical use of those words.

In light of the long established practice of scheduling such assignments as between B&B employees and Ore Dock employees the Board does not consider that argument relevant here and no such determination need be made. The Petitioner is not claiming exclusivity on a jurisdictional premise but only seeks to show that Claimants were "regular employees" within the meaning of Rule 14 (k).

The record shows, by statement of the Petitioner in its first submission, only that the Claimants "would have performed the work if it had been required during their work week (and thus) were the regular employees within the intent and purpose of the rule." But, the work was not performed during their work week and this claim on the above predicate is without merit.

From the record, which includes an acknowledgment by the General Chairman of the Organization in a letter dated 12/20/69 that "B&B forces have not performed this work exclusively," it is clear that neither the B&B employees nor the Ore Dock employees can be considered "regular employees" for purposes of assigning work on unassigned days for premium pay purposes. Both groups have performed the work interchangeably, depending in large part on the shift on which they were working, and performed incidental to their normal tasks.

The normal work schedule of B&B maintenance employees is a five day week on the "daylight" shift. The work schedule of the Ore Dock employees at the time in question was on a three shift basis, around-the-clock. It is asserted by the Carrier that Ore Dock employees have performed the work in question when need be, at straight time, as part of their regular duties, and always have done so when B&B employees were not available on these shifts. This fact is uncontroverted.

It is to be presumed that B&B employees also have performed the task of thawing when they are on duty, incidental to their regular maintenance duties. Thus, it must be concluded by the Board that the work in question is intermingled with the duties of both groups of employees and that neither group can be considered "regular employees" under Rule 14 (k).

From study of the claim, its handling on the property and the entire record before the Board, it must be concluded that the Petitioner's arguments based on the Scope Rule, Seniority Rule, and Classification Rule have no relevance to the relief sought under Rule 14 (k). The Board so finds, and has given those other Rules no consideration in reaching its conclusion.

The petitioner has not offered convincing proof or evidence that B&B maintenance employees are to be considered "regular employees" as intended by the language of Rule 14 (k).

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1971.