

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19429
Docket Number MW-17809

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Illinois Central Railroad Company

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

(1) The Carrier violated the Agreement when it assigned the work of cleaning tracks, parking lots and platforms, including cutting weeds and grass, at and near South Water Street, Chicago, Illinois, to other than Track Department employees. (System Case No. 436/C-45-T-66).

(2) Section Foreman R. G. Johnson and Section Laborers R. Jones, C. J. King, C. Tapps, J. Rizzo, J. Williams, W. J. Howell, E. J. Reyes, J. Jackson, R. Saffold, A. L. Smith and C. Salinas each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours consumed by other than Track Department forces in performing the work referred to in Part (1) of this claim.

OPINION OF BOARD: This claim alleges violation of the Scope Rule of the Agreement, and, by reason thereof, entitlement to a monetary award on behalf of Section Foreman R. G. Johnson and various employees in Section Gang No. 2, South Watergate Street, Chicago, Illinois.

FACTS OF RECORD

Petitioner alleges that, commencing on or about August 1, 1966, the Carrier used freight house employees to clean tracks, parking lots and platforms at or near South Water Street, Chicago. The work, according to Petitioner, was of a character traditionally and historically assigned to and performed by Track Department employees.

Carrier denied the claim on the ground that freight house employees had not cleaned tracks, and that such employees, at the location in question, had cleaned around their own facilities for many years. In a March 16, 1967 letter Carrier specifically stated "that the cleaning of tracks by freight house employees did not occur and that the work performed by freight house employees was confined to freight house facilities. Some of this work involved the cleaning of debris from freight cars. Freight house employees have cleaned around their own facilities at this location for many years."

During the handling on the property each party submitted letters from employees and Organization officials who purportedly had knowledge bearing upon the issue. These letters, and the inferences therefrom, constitute the evidence of record in support of the parties respective positions.

RULINGS OF PETITIONER'S CONTENTION

Petitioner contends that the disputed work was traditionally assigned to employees of the Track Department and that the work was assigned to and performed by persons not covered by the Agreement.

The Petitioner of course has the burden of proving that the disputed work has been traditionally and historically assigned and performed by Track Department employees and that such work has not been assigned and performed by other employees. On the record before us, the Petitioner has not carried this burden.

In the handling of the dispute on the property the Carrier denied that freight house employees cleaned tracks, and contended that the work performed by such employees was confined to freight house facilities, which work has customarily been performed by freight house employees.

From our review of the record we find that the Petitioner failed to prove that track cleaning was actually performed by the freight house employees, or that the work of cleaning around freight house facilities is work reserved to employees covered by the Agreement. The claim will, therefore, be dismissed.

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 Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. B. Killian
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1972.