

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19773
Docket Number MW-19500

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(The Belt Railway Company of Chicago

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

(1) The Carrier violated the Agreement when it used Speedswing Operator E. **Loggins** to perform snow removal service from tracks and switches on Section 26 during overtime hours on February 18 and 19, 1970 (**System File 393-MW**).

(2) Mr. Martin **Jimenez**, who was regularly assigned to Section 26 and who was available but was not called for the aforesaid overtime service, be allowed **10-1/2** hours' pay at his time and one-half rate.

OPINION OF BOARD: On February 18 and 19, 1970, several power operated switches were inoperative due to drifting snow. Carrier assigned a speedswing Operator out to clean snow. Claimant is a regularly assigned Maintenance of Way employee of the Track Department and the snow cleaning work was performed on Section 26. The Organization contends that Claimant was entitled to perform the work in question for the reason that he established and holds seniority as a Section Laborer which has thereby enabled him to obtain his position on the Section Gang assigned to Section 26. The Organization further contends that snow removal work has customarily and traditionally been assigned to and performed by Section Forces assigned to the Section territory on which the work was required to be performed. Carrier denies this claim and alleges that the work of removing snow from Tracks or Switches has not been exclusively performed by any specific employee or group of employees; that the involved work is not covered by the Scope Rule and the Organization has failed to prove by probative evidence that such work is the type reserved to Track employees by custom, practice or tradition. The record discloses that the Machine Operator **who** performed the involved work was not operating with the machine in cleaning the snow - he was cleaning snow with a broom. The Machine Operator was working on his assigned territory. Carrier also denies this claim for the reason that no rule violation **was** cited on the property.

The record discloses that no rule was cited on the property and that for the first time, Claimant cited Rule 14 before this Board. The awards are abundant to the effect that the Organization can not prevail before the Board on the basis of rules that were not cited or discussed during usual handling on the property. See Award No. 18879 (**Franden**), Award No. 18964 (Dugan), Award No. 15835 (Ives), and many others. Also, the involved work is not generally recognized as exclusive

work of any particular class or craft of employees. The Organization has failed to show by a preponderance of evidence that Maintenance of Way employees have exclusive right to perform the work in question. See Award No. 12409 (Dolnick), Award No. 13198 (Zack), and Award No. 14913 (Kabaker). The Organization cites Award No. 15640 (Ives) in support of this claim. A close inspection of Award No. 15640 shows that it is not in point in this instance. Said award reveals that in that instance, it was agreed by Carrier that Claimant was entitled to the call if he was available; this is not the fact in this case.

For the foregoing reasons, this claim will be dismissed.

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 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. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1973.