

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19841**
Docket Number NW-19850

Frederick R. **Blackwell**, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(**Duluth, Missabe** and Iron Range Railway Company

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

(1) The Carrier violated the Agreement when, on April 26, 1971, it used Track Maintenance Supervisor A. **Fena** instead of Carpenter-Truck Driver **H. Stsuty** to transport crack machinery from Proctor to **Steelton** (System Claim **10-71**).

(2) Carpenter-Truck Driver H. Stauty be allowed eight **(8)** hours' pay at his straight time rate because of the aforesaid agreement violation.

OPINION OF BOARD: The claim is that Rule **1**, Scope, of the Agreement **was** violated in that, in order to transport track machinery by truck from Proctor to Steelton, Minnesota, the Carrier **used** a Track Maintenance Supervisor to drive the truck instead of using claimant who was a regularly assigned **B&B** carpenter truck driver. The subject machinery was a small track machine which was **transported** in a supervisory vehicle (pick-up truck) for a distance of about ten miles.

The Carrier denied the claim on the grounds, inter alla, that the disputed work did not belong to claimant under the Agreement and that it is and has been past practice on the property for supervisors to perform such work. In the context of this denial, although the Carrier had the burden of proof as to its assertion of past practice, the Organization still had the burden to prove by probative evidence that the work belonged to claimant. Furthermore, since the Carrier's denial directly challenged the fundamental basis of the claim, the Organization was put on clear notice that it must produce positive evidence concerning claimant's rights to the disputed work. However, the record shows that, while the Petitioner dwelled on the subject of past practice, the Petitioner dealt with claimant's rights to the work with only a few vague references and **no** evidence at all. Consequently, on the whole record, we **must** conclude that Petitioner has not offered sufficient evidence to establish that the disputed work belonged to claimant. We shall therefore dismiss the claim.

Award Number 19841
Docket Number NW-19850

Page 2

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

The claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauline
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1973.