

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19922
Docket Number MW-19953

Irwin M. Lieberman, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement on February 26, 1971 and again on February 28, 1971, when it assigned Rip Track Foreman Reed instead of Mr. E. Pfeiffer to replace chains on switch stands in C. D. Yards (System File 013-293-16).

(2) Mr. Pfeiffer be allowed four (4) hours' pay at his straight "time rate and eight (8) hours' pay at his time and one-half rate because of the violations referred to within Part (1) of this claim."

OPINION OF BOARD: For several years prior to the incidents involved in this dispute, Carrier had equipped certain switch stands in its C.D. Yards with a locking device; this device consisted of a chain attached to the switch stand tie by staples or nails or bolts which could be locked with a padlock. On February 26 and February 28, 1971 a Mechanical Department employee replaced several chains in the C.D. Yards. Petitioner contends that this work should have been assigned to a Track Department employee.

The issue in this dispute is whether or not the work described above comes under the Maintenance of Way Agreement. Petitioner relies principally on Rule 2, the Classification Rule. In pertinent part that Rule reads:

"RULE 2

CLASSIFICATION

* * *

Track Sub-Department

Track Laborer: An employee assigned to maintaining, repairing or construction of track, including stability of roadbeds, loading or unloading track material and miscellaneous labor work not performed by employees in other classifications shall constitute a Track Laborer."

Petitioner argues that Track Department employees have traditionally performed the work of replacing these chains when necessary, but presented no evidence whatever on the property to substantiate this argument. Carrier claims that this work has not been performed exclusively by Track Department employees. Carrier however concedes that maintenance of switch stands and track structures

is work of employees covered by the Maintenance of Way Agreement. If the record had established the fact that the chain locking device was an integral part of the switch, we could accept Petitioner's argument; however, in fact the record does not do this.

We have examined the Awards cited by the Organization but do not find them in point; they either deal with assignment of positions from one craft to another, the contracting out of work or with factual situations far removed from that in this case.

The Petitioner's reliance on Rule 2 we find to be without merit. We have held in many prior Awards that Classification Rules do not reserve work exclusively to employees of a given class (Awards 13638, 17421, 18471, 18876 and others). Petitioner had the burden of establishing the exclusive rights to the work in question by evidence of system-wide practice, or to prove that the work was an integral part of switch maintenance - indeed that the chain was part of the switch stand - ; in both of these areas Petitioner failed.

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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.