

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22465
Docket Number MW-22345

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Burlington Northern Inc.

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

(1) The use of other than Track Subdepartment employees to clean cars at Northtown Yard is in violation of the current agreement (5-1-71) and of historical and traditional practice under the Agreement which pre-existed at that location prior to May 1, 1971 (System File T-M-186C/MW-84(c)-6 12/6/76).

(2) Track Subdepartment employees C. F. Paterson, Ivan Meech, Frank Janiak and K. O. Lohmann each be allowed eight (8) hours' pay at their respective straight-time rates for each day on which other than Track Subdepartment employees are used to clean cars at Northtown. This monetary claim is for the period beginning 60 days prior to October 6, 1976 and continuing to the date on which Track Subdepartment forces are reassigned and used to perform the subject work."

OPINION OF BOARD: This claim is based on the alleged improper use of other than track sub-department employees to clean cars at Carrier's Northtown Yard in violation of Rules 1(c) and 69(c) of the current agreement.

The Carrier first raised the procedural issue of the 60 day time limit rule set out in Rule 42(a). The instant claim falls, however, within the definition of a continuing claim to which Rule 42(d) applies and is **therefore** properly before this Board.

The questions presented to this Board in the instant matter are the same as that determined by the Board in our Award 21844 between the same parties and involving the same rules. In Award 21844 we held that the work in question was not specifically reserved to the track sub-department by the Schedule Agreement. We further held that the Organization had failed to establish an exclusive system wide right to the work by those claiming it.

We will follow the interpretation of the Agreement set out in Award 21844 and hold that the Schedule Agreement does not reserve the work to the track sub-department employees. We further hold that the Organization has failed to establish that track sub-department employees on the former Northern Pacific had the exclusive, system wide right to perform the car cleaning work.

We will deny the claim.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1979.