

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23233
Docket Number MW-23126

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted employee of the Chicago and North Western Transportation Company to remove snow from switches at Austin, Minnesota on February 23, 1978 (system File C-43/D-2169).

(2) Furloughed employees E. R. Nerby and S. D. Hulet each be allowed four (4) hours of pay at their respective straight-time rates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: According to the Organization, on February 23, 1978 the Carrier "...assigned or otherwise permitted" a Foreman and a Laborer of the C&NW Transportation Company to remove snow from switches. The Employees assert that such removal has been customarily, traditionally and historically assigned to and performed by Carrier's Track Subdepartment forces. Further, It is asserted that the Claimants, who were on furlough, were available and fully qualified to perform all of the work in question.

Although, on the property, certain defenses were raised such as an allegation that the Employees who performed the work were "trespassers" and that certain time limits were ignored, the case, as presented here, is restricted to a consideration of more clearly defined merits of dispute.

The Carrier asserts that the work in question "...was performed on trackage that is jointly owned by the Milwaukee and the C&NW Railroads. The Employees of the C&NW Railroad were merely cleaning switches for movement of their own train on trackage that is jointly owned by them and the Milwaukee Road." Further, the Carrier asserts that the work performed was done without its knowledge at the time.

Although, in its Submission, the Employees have made certain comments concerning the factual assertion referred to above, we do not find any evidence that the Employees disputed the contentions while the matter was under review on the property, even though there was ample opportunity to do so.

The Carrier has cited a number of Awards which (it asserts) substantiates its position, such as Third Division Award 13581, among others. Our attention has also been invited to Award 22942 which seems to be pertinent to the un rebutted factual assertions of record.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties valued 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:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.