

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23894
Docket Number MW-23341

George E. Larney, 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 Agreement was violated when the Carrier used B&B forces to clean snow from switches at Madison, **Illinois** from **12:00** midnight on January 13, 1979 to **7:30** AM on January **15, 1979** instead of using Track Laborers Ernest Peiffer and **Lonnie** Guion for such overtime service (System File **TRRA 1979-3**).

(2) Claimants Ernest Peiffer and Lonnie **Guion** each be allowed **twenty-three** and one-half (**23-1/2**) hours of pay at their respective time and one-half rates and eight (**8**) hours of pay at their respective double time rates as a consequence of the aforesaid violation."

OPINION OF BOARD: Rule **6** of the Controlling Agreement bearing effective date of **May 1, 1952**, revised as of September 1, **1965**, provides that employees belonging **to the Organization** shall **have** seniority **in** either one of two sub-departments to wit, Bridge and Building Sub-Department or Track Sub-Department. Claimants herein have established and hold seniority as track laborers within the Track Sub-Department.

On the claim dates in question, Carrier assigned **two** mechanics of the Bridge and Building Sub-Department to remove snow from stitches at W. R. Tower at Madison, Illinois. The Organization on behalf of the Claimants submits the work of removing snow belongs generally to employees in the Track Sub-Department and specifically to the **two** Claimants on the dates in question based on their seniority status within the sub-department. In support of its position on this latter point, the Organization cites in relevant part the Track Sub-Department's Classification of Work as set forth in Rule 2 of the Controlling Agreement, which reads as follows:

"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."

The **Organization** contends the subject work of snow removal falls under the category, maintaining of track. In contrast, the Organization cites the quite lengthy Classification of Work set forth for employees of the Bridge and Building Sub-Department, also contained under Rule 2, and notes that nowhere is there any reference made to snow removal specifically or anything having to do with maintaining of track. The Organization notes Rule 2 provides that motor truck operators when not operating the trucks may be assigned by the

Carrier to perform work in either sub-department to the extent of their capabilities, **with** the exception of performing skilled work of ironworkers. However, the Organization further notes the two employees in the Bridge and Building Sub-Department assigned to remove the snow from switches were mechanics and not **motor** truck operators.

Additionally, not only does the subject work accrue to employees of the Track Sub-Department by way of Agreement Rule but also, the Organization submits, such work **as** of the nature involved here was **customarily** and historically been assigned to Rack Sub-Department employees.

Carrier notes as background to the dispute that severe weather conditions of snow and sleet storms were prevalent in the St. Louis Metropolitan area in mid-January of **1979**, requiring it to work employees of both Maintenance of Way Sub-Departments a substantial number of overtime hours in an effort to **maintain** operations at as nearly **a** normal level as possible. Carrier further notes that under such conditions the primary function of the Maintenance of Way employees is to clear switches, walkways, roads and certain structures of snow and ice.

Carrier argues there is no rule in the Controlling Agreement which provides that the work of sweeping snow and ice from switches is work accruing exclusively to employees of any Maintenance of Way Sub-Department, nor is it **work** accruing exclusively to Track Sub-Department employees by virtue of past practice, custom **or** tradition. Moreover, Carrier submits, nothing in the Rules cited by the Organization **as** having been violated, prohibits other employees from performing the disputed work. Carrier asserts the work of sweeping snow and ice from switches is work which has historically been performed by employees of various classes and crafts and therefore is not reserved exclusively to any one of them. Thus, Carrier submits, in the absence of specific agreement language such as here, past and accepted practice becomes controlling. Carrier argues that in such instances where employees belong to the same craft but **are** classified in different classes of work, the burden of proving exclusivity on the part of one class is greater than in other jurisdictional disputes. In support of its position on this point, Carrier cites in relevant part Award **20425**, wherein the Board held:

"It is well established that Claimant must bear the burden of proving exclusive jurisdiction over work to the exclusion of others. This Board has also found that when there is a jurisdictional question between employees of the same craft in different classes represented by the same Organization, the burden of establishing exclusivity is even more heavily **upon** Petitioner (Awards **13083** and **13198**)."

Carrier argues the Organization has completely failed in its burden to prove the disputed work belongs exclusively to employees of the Track Sub-Department.

Notwithstanding the foregoing **arguments**, Carrier submits that upon its investigation of the surrounding circumstances its findings, based on

information provided by Supervisor, Assistant Chief Engineer, C. R. Perkins, shows the two mechanics of the Bridge and Building Sub-Department did not actually perform the disputed work as alleged by the Organization. Carrier cites Perkins' account in **summary** form as follows:

"~~Sometime~~ shortly after 5:30 P.M., on January 14, 1979, the two Building and Bridge mechanics, Jimmie L. Thompson and Roger Scott, called me at the Coordinator's Office at Madison Yard advising they had completed clearing stairways and walkways around WR Tower, in Granit City and asked for further instructions. I told them at the time to report to me at Madison Yard which they did.

When Thompson and Scott arrived, I inquired if they wanted to be relieved or remain on duty and they elected to **remain** on duty. I then instructed them to go to Track Supervisor **McKeown's** Office and remain there so I could easily locate them, if and when they might be needed."

Carrier notes Perkins maintains he never did call them during the remainder of the night in question, thus submitting Thompson and Scott did not perform the disputed work on the claim dates as so alleged.

We note from a close and careful review of all the evidence before us that neither party has provided substantive proof of its position. What we are faced with is mere assertion from both parties that their account of the events equates to the truth of the matter. Such mere assertion is of course completely self-serving and in the absence of any substantive proof leaves this Board stymied in its deliberation and capacity to render a fair and intelligent ruling. Accordingly, without benefit of the information required to determine first, whether the disputed work was actually performed by Thompson and Scott, and second, whether the work is reserved exclusively to **employees** of the Track Sub-Department either by contract language or past practice or both, we find we must dismiss this instant claim. X

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.

Award Number 23894
Docket Number MW-23341

Page 4

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of May 1982.

