

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26456
Docket Number MW-26053

George S. Roukis, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(The National Railroad Passenger Corporation (Amtrak)

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

(1) The Carrier violated the Agreement when it assigned Truck Driver R. Ream instead of **Trackman** I. Bostic to perform overtime service in connection with snow removal work at Cork Interlocking on February 6 and 7, 1983 (System File NEC-BMWE-SD-614).

(2) As a consequence of the aforesaid violation, **Trackman** I. Bostic shall be allowed sixteen (16) hours of pay at his overtime rate."

OPINION OF BOARD: The Organization contends that Carrier violated the Controlling Agreement, specifically, the Scope and Work Classification Rules, **when** on February 6 and 7, 1983, Carrier used a Truck Driver to perform overtime service in connection with keeping switches free of snow at the Cork **Interlocking** Facility. It asserts that one of the primary duties of the Trackman's position is the task of maintaining track which, by definition and prior Board determination, includes clearing snow from track and switches (see Third Division No. 4593). Moreover, it further disputes Carrier's assertion that the Claim is procedurally moot, arguing instead that it placed in the U. S. Mails a rejection letter, dated May 9, 1983.

Carrier avers that it did not receive a timely rejection of the Division Engineer's denial letter, dated March 11, 1984, and consequently, the Claim is invalid. It cited several Third Division Awards to support its position. (See Third Division Award Nos. 8564 and **14808**)

As to the substantive merits of this Claim, Carrier contends that the Organization failed to adduce clear evidence that the Work Classification Rule reserved snow removal work to **Trackmen** nor evidence that such work was exclusively performed by them on a systemwide basis. It avers that snow removal is unskilled work **and** not the exclusive province of any particular class or craft. It contends that on the claimed dates, it was necessary to use the Truck Driver, since he was required to drive the vehicle to the outlying points where snow removal work was to be performed, and accordingly, in the absence of preclusive Agreement language it was permissible to use him. In its Rebuttal Submission, it included a **1985-dated** Truck Driver's job description which indicated that when not operating vehicles, the Truck Driver incumbent would be assigned **Trackman** duties.

In our review of this case, we concur with the Organization's position that the Claim is procedurally valid. Consistent with the definitional criteria set forth in Third Division Award No. 24528, we find that the Organization, when challenged, submitted proof that a letter was presumably mailed on May 9, 1983, and no evidence that the parties had relied upon certified or registered receipts.

It appears that the parties had traditionally relied upon the regular U.S. Mail service to exchange correspondence and thus when questioned, the Organization produced a letter as proof of compliance. As we noted, in part, in the above cited Award, "where the charged party, be it the **employee** organization or the carrier, has produced a letter as proof of Agreement compliance, the Board has considered this form of proof to be generally acceptable." Upon the record we see no reason to vary this observational precept here. **Moreover**, there are parallel indications that the Carrier was aware of this Claim as evidenced by the May 10, 1983, Claim letter from the B.M.W.E. District Chairman to the Assistant Regional Engineer East Track. This letter was submitted on behalf of the Claimant herein.

As to the dispute's substantive merits, we agree with the Organization that the work of removing **snow** from track and switches is properly covered under the work "maintain" in the Track Department's Work Classification Rule, particularly Item 40 and this is further reinforced by our decision in Third Division Award No. 4593. During the **course** of the Claim's **appeal**, and specifically in Carrier's Ex **Parte** Submission, Carrier took the position that snow removal work was "other work as assigned," since this language was in the job description of the Truck Driver. It never took the position that a Truck Driver would perform **Trackman** duties when not operating a vehicle. This is new evidence and inadmissible under **our** Rules. (See Circular No. 1) For these reasons we find that Carrier violated the Agreement and the Claim is sustained at the pro rata rate.

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 violated.

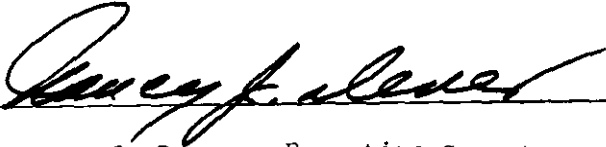
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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.