

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26674
Docket Number MW-26262

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Soo Line Railroad Company

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

(1) The Carrier violated the Agreement when it used Track Inspectors D. Hershberger and S. Nilsen to perform snow removal work between Milladore and Stevens Point, Wisconsin on February 3, 1983 (System File App. M/800-46-B-167).

(2) Because of the aforesaid violation, Furloughed Sectionmen J. B. Nelson and M. L. Callows shall each be allowed pay at their respective rates for an equal number of hours worked by Messrs. Hershberger and Nilsen in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: On February 3, 1983, Carrier, following a heavy snow fall, assigned two track inspectors the task of clearing snow from switches between Milladore and Stevens Point, Wisconsin, a distance of some 31 miles. Claimants, both Sectionmen, were on furlough at the time and available and qualified to do the work.

Rule 45(j) of the Agreement provides:

"(j) Laborers may be employed as required to do excavating or back filling and similar miscellaneous pick and shovel work."

Appendix M of the Agreement provides in pertinent part:

"(2) It will be the duty of the track inspector to inspect his district and advise the section foreman of repair work requiring attention. The inspector will also perform minor repair work such as replacing missing bolts, cleaning crossing flangeways and servicing switch lamps."

The Organization argues that the work of shoveling snow from switches is the type of work contemplated by Rule 45(j) and is therefore reserved to laborers. In addition it is observed that the provisions of Appendix M enumerates the duties of track inspectors and makes no mention of snow removal or other shoveling work. It is urged further that the parties, in negotiating Appendix M, intended to prevent track inspectors from becoming roving maintenance forces usurping the work of section forces within their districts.

Further, there is no need in this instance to look to exclusivity since the terms of the the Agreement are clear and unambiguous, according to the Organization. Carrier states that not only is there no rule or agreement giving Sectionmen exclusive rights to clean snow from switches, but also it has been a long-standing practice for train crews to accomplish this task. Carrier also states that there is nothing in Rule 45(j) that prevents an employe in another classification from performing the work in question. Carrier also notes that Appendix M is not an exclusive listing of minor repair work and hence the inspectors are not precluded from performing the snow cleaning activity.

The Board, after examining the record, has found no evidence to counter Carrier's assertion that it has been a long-standing practice for train crews to clean snow from switches. In addition, there is no evidence to establish that the work is exclusively reserved to Sectionmen, by either practice or rule. The reasoning in Third Division Award 21495 is directly applicable to this dispute and is controlling:

"We have previously held that when there is a jurisdictional question between employes of the same craft, represented by the same Organization, the burden of establishing the exclusive right to the work in question is even more heavily on Petitioner; see Awards 13083, 13198 and 20425. In this dispute the key question is not only whether the work should have been performed by an hourly rated employe but also whether it indeed was work reserved to the craft under the Agreement. There is no persuasive evidence on either point in this record and therefore the claim must be denied."

For the reasons indicated, the Claim must be denied.

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 Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.