

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Duluth, Missabe and Iron Range Railway Company

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

(1) The Agreement was violated when, on March 5, 1985, a Bridge and Building Department employe was used to plow snow from a road and the parking lots at Duluth Ore Docks (Claim J-21-85).

(2) Because of the aforesaid violation, a track laborer shall be allowed the difference between the track laborer's rate and the machine operator's rate for March 5, 1985."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On March 5, 1985, the Carrier assigned a Bridge and Building Subdepartment employe rather than a Track Subdepartment employe using "a B machine a Fiat loader" to remove snow from parking lots and a road at the Duluth Ore Docks. The record further discloses that in the past, general snow removal work has also been performed by ore dock workers, clerks, carmen, storehouse employes and others using various kinds of equipment.

This Scope Rule is general. See Third Division Award 19921 ("Given the general Scope Rule of this Agreement ..."). References to snow removal work in Rule 26(1) for track laborers are not to the exclusion of other crafts for the location of the disputed work at issue in this case. Therefore, as stated in Third Division Award 26831:

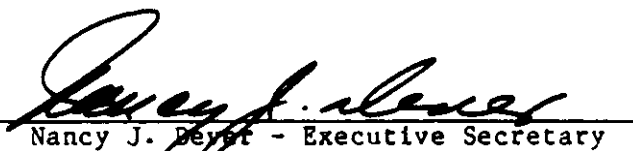
"The Divisions of the National Railroad Adjustment Board have uniformly held that, unless particular items of work are defined by specific Agreement language as reserved to a single craft, the Organization laying claim to work has the burden of proving the work involved belongs to it by custom and practice on a system-wide basis."

In light of the evidence supplied by the Carrier concerning the extent of snow removal work performed in the past by other groups of employees, the Organization has not met its required burden of demonstrating snow removal work by custom and practice on a system-wide basis. While the Organization offered statements from employees concerning snow removal work, those statements even considered with the other evidence offered by the Organization, cannot cause us to conclude that its burden has been met in light of the contrary evidence offered by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Deyet - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.