

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

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

(1) The Carrier violated the Agreement when it assigned Ore Dock Operator B. Carlson (BRAC) to grade and repair the road at the west end of the Carrier's property at Two Harbors, Minnesota on or about September 10, 1987 (System File 35-87).

(2) As a consequence of the violation referred to in Part (1) above, the senior Track Department 'B' Machine Operator on the date in question shall be allowed one (1) hour and thirty (30) minutes pay at his straight time rate."

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.

In September, 1987, the Carrier assigned an Ore Dock Operator (TCU) to fill low spots in a temporary road used by a contractor. The employee repaired the road with the use of a front end loader. The Organization argues that the work was reserved to employees of the Track Department by Agreement Rules 1, 2, 26 and Supplements Nos. 9, 13 and 18. The Organization maintains that the work was exclusively reserved to Maintenance of Way employees on a system-wide basis. The Carrier denies any Agreement violation or exclusivity.

A reading of the Scope, Seniority, Classification of Work Rules along with the Supplements finds them to be general, rather than specifically reserving the disputed work exclusively to track employees. Work on roads is not the same as work on roadbeds. We find no language contractually reserving the work of grading and repairing a temporary road to Maintenance of Way forces.


Absent controlling Agreement language, we have made a close study of the evidence of a system-wide practice. The letters assigning work and the typed form individually signed by more than forty employees does not sufficiently prove the Claim. Neither these, nor other evidence establish exclusivity. We find in the signed statement that the disputed work is performed system-wide by the Maintenance of Way employees. This the Carrier denies. The burden of proof establishing that fact has not been met (Third Division Award 27571). The evidence in this record lacks the preponderance and probative value to establish exclusive reservation to track employees. The record does not permit us to conclude by Agreement language or practice that the work of road repair on this property is exclusive to track employees. The Claim must be denied for lack of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Lever - Executive Secretary

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