

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28786
Docket No. MW-27338
91-3-86-3-554

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

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

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

(1) The Carrier violated the Agreement when it assigned outside forces to perform plumbing work in the shop buildings at North Fond du Lac, Wisconsin from November 14 through December 6, 1983 [System File NMA 121181 1 45 (g,i,j)/800-46-B-181-A].

(2) The Carrier also violated the Agreement when it did not give the General Chairman advance written notice of its intention to contract out said work in accordance with Rule 47.

(3) Pump Repairman F. Bialas shall be allowed one hundred twenty (120) hours of pay at his straight time rate and the six (6) members of B&B Crew 602 who were active on the claim dates shall each receive thirty-four and two-thirds (34 2/3) hours of pay at their respective straight time rates."

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.

A Claim was filed by the Organization on December 22, 1983, on behalf of the Claimants, on the ground that the Carrier violated the Agreement when it contracted with Ahern-Gross and Groeschel Excavating in connection with the installation of valves, piping and associated work to tap into the water supply system of the Village of North Fond du Lac, Wisconsin, during the period from November 14, 1983, through December 6, 1983.

In its response dated February 19, 1984, Carrier asserted that this project was not a part of connecting to the Village water supply; rather, the work pertained solely to making repairs to water lines within shop buildings. Work of this nature, the Carrier argued, has historically been performed by the Mechanical Department either with their own forces or by contract, and since past practice established that the work was not exclusively performed by employees, represented by the Organization, the Claim was denied.

The Organization contended, in its correspondence with the Carrier during the handling of this dispute on the property, that even if the work is as Carrier described, its forces have historically performed work of this nature inside shop buildings. In support thereof, it refers to a letter to the Carrier dated March 3, 1985 from the General Chairman of this Organization and the Sheet Metal Workers' General Chairman stating that prior to 1980, pipe repair work was divided so that overhead work and structural modifications would be done by pipefitters and B&B crews. The General Chairmen objected to the changes implemented by Carrier subsequent to 1980 and maintained that such changes violated their respective Agreements and historic practice. Moreover, the Organization maintained that the schedule rules are sufficiently clear and unambiguous so as to supersede the need to rely on past practice. The Rules relied upon by the Organization state as follows:

"RULE 45 -- Classification of Work

(c) An employee assigned to construction, repair, maintenance, or dismantling of buildings, bridges, or other structures (except the iron or steel work), including the building of concrete forms, erecting false work, etc., or who is assigned to miscellaneous mechanic's work of this nature, shall constitute a bridge and building carpenter and/or mechanic.

* * * *

(g) An employee regularly assigned to the maintenance of water station equipment including pipe lines, heating plants and plumbing facilities that come under the jurisdiction of the Chief Engineer shall constitute a pump repairer.

* * * *"

Carrier disputes the Organization's claim that there is clear specific reference to language in the Agreement whereby the work accrues to its members or that it has been demonstrated that the work at issue was customarily performed by the Claimants to the exclusion of others. It further argues that since the work contracted was not within the scope of the Agreement, it was not obligated to notify the Organization of its intent to utilize outside contractors.

After careful review of the record in its entirety, we concur with the Carrier's view. Although the Organization relies most heavily upon its Classification of Work Rule, Rule 45(c) and (g), our examination of that language indicates that there is nothing in Rule 45(c) which reserves the work of water line repair to Organization members. Moreover, 45(g) refers only to piping and plumbing work which comes under the jurisdiction of the Chief Engineer, and the Carrier has asserted, without rebuttal from the Organization, that the plumbing in the shop buildings at issue here is under the jurisdiction of the Chief Mechanical Officer, not the Chief Engineer. Accordingly, we find no Agreement support for the Organization's assertion of work reservation.

By the same token, we find absent here the necessary evidence that the disputed work accrues to the Organization by virtue of custom or practice. As indicated in its March 3, 1985 letter to the Carrier, the work at issue here is clearly non-exclusive to either the Sheet Metal Workers or the Maintenance of Way Employees. In fact, as we view the evidence, it appears that various crafts as well as outside contractors have throughout the years been utilized to perform such work, and the Organization has not offered any probative evidence to disprove that basic point.

Since the work was not within the scope of the applicable Agreement, no notice was required and the Agreement was not violated. Accordingly, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.

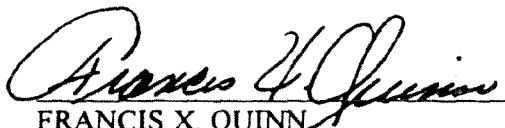
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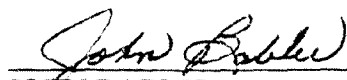
Parties to Dispute: Union Pacific Railroad Company
(formerly Chicago & North Western Railway Co.)
and
United Transportation Union

Statement of Claim: Claim of Collector Michael E. Gulley for reinstatement with vacation and
seniority rights unimpaired as a result of investigation of January 10, 2000.

Findings: When a passenger attempted to evade paying fare on December 3, 1999, and
verbally abused Claimant, an altercation ensued. While there is some basis for a
charge of Rule 1.6, the record is replete with testimony that in this contest of wills,
the Claimant was not the instigator. He is to be returned to work on a leniency
basis, but without back pay.

Award: Claim sustained in part.


FRANCIS X. QUINN
Chair and Neutral Member


JOHN BABLER
Organization Member


JIM MASH
Carrier Member

Date May 17, 2000
Memphis, Tennessee