

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis 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 other than Bridge and Building Department forces to install a fire suppression system in the 'MX' reclaimer at the Lakehead Storage Facility on April 18, 19, 22 and 23, 1985 (System File 28-85).

(2) As a consequence of the aforesaid violation, the two (2) senior furloughed B&B mechanics shall each be allowed seventeen (17) hours of pay."

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 April, 1985, Carrier decided to install an automatic fire suppression system in the operator's cab of the MX reclaimer used at its Taconite Handling and Storage facility in Duluth, Minnesota. The system was purchased and, after some consideration, it was concluded by the Carrier that the work of installing the system would be assigned to the Ore Dock employees represented by TCU. This work was performed by Ore Dock Employees on April 18, 19, 22, and 23, 1985. The Organization (MW) protested the assignment of the work to them. It contended that the fire suppression system should have been assigned to Bridge and Building Department employees. It relies on the terms of Supplement No. 9 and the signed statements of forty-five employees to support its Claim. Supplement No. 9 reads as follows:

"SUPPLEMENT NO. 9

Jurisdiction of Work - Maintenance
of way - Ore Dock Employees

Commencing November 1, 1977, maintenance work to be performed by Ore Dock employees or B&B Department employees at the Duluth Lakehead, Steelton, or Two Harbors ore storage facilities will be allocated as follows:

Ore Dock Employees

1. Maintenance and running repair of bucket wheel reclaimers, front end loaders, swing loaders, sweepers, and other mobile equipment which may be assigned.
2. Maintenance and running repair of rail-mounted trapping machines.
3. Installation, maintenance and running repair of hydraulic systems.
4. Greasing of conveyor systems, except when performed in connection with installation of new idlers or equipment.

Bridge and Building Department Employees

1. Maintenance and repair of conveyor systems and equipment not specifically listed for Ore Dock employees above.

New maintenance to be allocated to Ore Dock or B&B employees will be allocated in accordance with the foregoing pattern of work distribution.

It is understood that the purpose of this Supplement is to assist in the orderly distribution of work between the crafts involved and is not to be interpreted as granting exclusive rights to work or infringing on any work rights belonging to other crafts."

The text of the statements relied upon to support the Organization's position all read as follows:

"STATEMENT

FIRE EQUIPMENT AND EXTINGUISHER SYSTEMS
DULUTH, MISSABE & IRON RANGE RAILWAY
COMPANY

TO WHOM IT MAY CONCERN:

MY EXPERIENCE OR TO MY KNOWLEDGE THE INSTALLATION, REPAIR AND MAINTENANCE OF FIRE EQUIPMENT AND EXTINGUISHER SYSTEMS HAS BEEN TRADITIONALLY THE WORK OR THE MAINTENANCE OF WAY EMPLOYEES.

SIGNED _____

DEPT. _____

YEARS OF SERVICE _____"

Carrier based its position on Supplement No. 9 as well. It argued, however, that Item No. 1, under work assigned to Ore Dock employees, covers the work at issue. Carrier considers the installation of the fire prevention system in the cab of the bucket wheel reclaimer to be in the nature of maintenance and, as such, it is specifically listed as belonging to Ore Dock Employees.

It also argues that the statements by the forty-five employees submitted by the Organization have no probative value. The statements made no Claim of exclusivity or system-wide application and, even if they did, Maintenance of Way work and Ore Dock Employee work is defined in Supplement No. 9, signed in 1977. The work of installing the fire suppression system in the cab of the bucket wheel reclaimer is maintenance work and should be assigned to Ore Dock workers. The Organization has not demonstrated otherwise.

The Board has reviewed the record and the numerous awards submitted by the parties. As a result of that review, the Board concludes that Carrier has presented the more persuasive position. The burden of proof in such cases rests with the Organization. It is its task to persuade this Board that Contract language or, in the absence of clear Contract language covering the subject in dispute, past practice supports its position. It has failed in both areas. The Organization attempted to persuade this Board that Supplement No. 9 does not apply to this dispute, but that Rule 2 (Seniority, Bridge and Building Subdepartment) and Rule 26 (c) & (e), Classification of Work do apply. The Board rejects that position. Because of a long history of jurisdictional disputes, the parties to this dispute entered into a Supplemental Agreement (Supplement No. 9) to specifically address the problem in detail of who does what work. That Agreement takes precedent over all others in the area of work distribution between Ore Dock and MW workers.

The portion of Supplement No. 9 that applies to Bridge and Building Department employees reads as follows:

"Bridge and Building Department Employees

1. Maintenance and repair of conveyor systems and equipment not specifically listed for Ore Dock employees above.

New maintenance to be allocated to Ore Dock or B&B employees will be allocated in accordance with the foregoing pattern of work distribution."

When one reads this language, it is difficult to conclude that the installation of a fire suppression system in the cab of a bucket wheel reclaimer is covered under that language.

As to the statements of the forty-five employees submitted into the record, this Board does not view these statements as probative evidence but more in the nature of general statements of what may have prevailed in the past.

The Organization submitted Third Division Award 27588 in support of its position. This Board does not consider the issue involved in that case to be germane to the instant dispute. We have, therefore, disregarded it in our deliberation.


Based on the Organization's inability to carry its required burden of proof, this Board is compelled to deny the instant Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1992.