

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30273
Docket No. MW-29661
94-3-91-3-6

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr., 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 Carrier violated the Agreement when it assigned two (2) TCU ore dock mechanics instead of B&B mechanics to perform lubricating maintenance work to the shiploader shuttles at the Duluth Ore Dock No. 6 beginning on July 24, 1989 and continuing (Claim No. 27-89).
- (2) As a consequence of the aforesaid violation, furloughed B&B Mechanics J. C. Lee and R. D. Haedrich shall each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours expended by the TCU mechanics performing the work described in Part (1) above and restoration of all fringe benefits lost beginning July 24, 1989 and thereafter as long as the violation continues."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 this dispute, the Transportation Communications Union ("TCU") was found to be a Third Party at interest. That Organization was notified and filed a Submission with the Board.

Involved here is the work of greasing shuttle conveyors utilized for the loading of ore on ships. This loading work was previously accomplished with gravity feed spouts and hoists, which are still utilized for other shiploading work.

Repair and maintenance, including greasing, of the gravity feed spouts and hoists has been and continues to be assigned to Maintenance of Way employees. The greasing of the shuttle conveyor rollers began in 1984 and was assigned to TCU-represented employees, who, as will be seen, perform related duties at the dock facility. In 1989, the Organization initiated this Claim, contending the work should be assigned to Maintenance of Way employees and arguing that previous Agreement "violation" since 1984 did not provide support for the Carrier's action.

The close relationship of work performed by TCU ore dock employees and BMW maintenance employees is indicated by a jurisdiction of work agreement consummated in 1977 and designated as Supplement No. 9 in the BMW Agreement. This reads in pertinent part as follows:

"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

. . . .

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."

The new shiploader conveyors came into operation seven years after the agreement on Supplement No. 9. The Carrier argues that the specified assignment of "greasing of conveyor systems" logically extended to the "new" greasing work for the shiploading conveyors. Thus, it directed the work to ore dock employees. The Organization responds by pointing out that the Supplement No. 9 work division refers to the "storage facilities" and thus does not encompass the shiploading function which is not part of the storage function.

The Carrier responds by noting that much of Supplement No. 9 concerns equipment and functions beyond the storage area.

The Board concludes that the Organization has not met its burden of proof to show that the specified work must be assigned to Maintenance of Way employees. Rule 26, Classification of Work, on which the Organization relies, does not specify greasing conveyors nor has it been found, in many previous reviews, to be a "reservation of work" provision. The Board also does not equate the gravity feed spouts and hoists with the new conveyor, even if they perform a similar function. Clearly the shiploader conveyor is "new" work and is more closely related to other conveyors. In addition, Maintenance of Way employees continue to service the gravity feed equipment, which has not been abandoned. Finally, the fact that the assignment to ore dock employees was not contested by the Organization for five years, while not necessarily justifying the assignment, clearly lends some doubt to the strength of the Organization's argument.

AWARD

Claim denied.

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of July 1994.