Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36088
Docket No. MW-34597
02-3-98-3-242

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Glenwood Section 768 Truck Driver (F. Blaskowski) to perform overtime service (snow removal work) in the Glenwood Yard on February 21 and 22, 1997 instead of assigning Section Laborer S. P. Solum who is assigned to the Glenwood Section 768 Gang (System File R1.116/8-00309).

(2) As a consequence of the violation referred to in Part (1) above, Claimant S. P. Solum shall be allowed seven (7) hours' pay at the section laborer's time and one half rate and he shall receive proper credit for benefits and vacation purposes."

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 were given due notice of hearing thereon.

At the time of the incident in question, the Claimant established and held seniority as a Section Laborer dating from September 11, 1975. The Claimant was assigned and was working as a Section Laborer on the Glenwood Section 768 Gang headquartered at Glenwood, Minnesota. F. Blaskowski had established and held seniority as a Truck Operator.

The facts in this matter appear to be uncontested. On Friday, February 21, 1997, the Carrier required an employee to perform the overtime service of removing snow and ice from switches at Glenwood Yard. While the Claimant was the senior Section Laborer regularly assigned to that section, the Carrier called Truck Operator Blaskowski to perform the subject work.

Blaskowski was called to work beginning at 10:30 P.M. on Friday, February 21 and worked until 5:30 A.M. on Saturday, February 22, 1997. Thus, Blaskowski worked for a period of seven hours at the appropriate overtime rate.

The Organization takes the position that the Carrier failed to recognize the Claimant's superior seniority as a Section Laborer in assigning overtime service on February 21, 1997. While the Carrier contends that an emergency existed, the Organization takes the position that the circumstances did not constitute an emergency. The Organization claims that the burden to prove an emergency is on the Carrier and it has not been able to meet that burden. Further, even if such emergency actually existed, the Organization contends that the Claimant was still available and entitled to be called for work. Both the Claimant and Blaskowski's shifts ended at 3:30 P.M. on February 21, 1997, a full seven hours prior to the overtime worked. The Organization claims that the Carrier did not make an effort to contact the Claimant and that the Carrier should have first called the Claimant, as he was more senior. Finally, the Organization contends that the Carrier's exclusivity argument fails and should not be relied upon. Because of this error, the Claimant is entitled to be made whole for all time lost.

Conversely, the Carrier takes the position that a bona fide emergency existed on the dates in question and that the Carrier had broad discretion to select who would complete the work. Contrary to the Organization's argument, the Carrier did not have to assign by seniority and was well within its rights to select Blaskowski. Further, the Carrier argues that even if no emergency existed, the snow removal work was appropriately within the jurisdiction of Truck Operator Blaskowski rather than the Claimant. Here, the Carrier contends that the work did not belong to the classification

of Section Laborer, but rather to the classification of Truck Operator. The Carrier maintains that the burden of proof is on the Organization to prove that the snow removal work belonged to the Claimant and it has been unable to do so. Finally, the Carrier contends that the Organization has been unable to prove that the Claimant was available for work on the relevant dates. Thus, the Carrier requests that the claim be denied.

After a review of the evidence, the Board finds that it must agree with the Carrier that the Organization has not been able to meet its burden of proof. While we agree with the Organization that the Carrier has not proven that an emergency existed, we find that we must agree with the Carrier that the Organization has not been able to prove that the snow removal work in question belonged to the job classification of the Claimant (Section Laborer) rather than the employee who received the work (Truck Operator).

As is well noted, the burden of proof in such a matter does fall upon the Organization to show that the work was properly that of the Claimant.

The Board addressed a similar issue in Third Division Award 35843 when it discussed that the burden of proof is on the Organization to show that the Carrier was obligated to assign the work to the claimant. It quoted from Third Division Award 26548:

> " . . . The basic issue herein is whether the disputed work belongs exclusively to Crane Helpers. In the absence of clear Agreement language that specifically reserves identifiable work to members of the Organization, the Organization is obligated to show by reference to systemwide past practice that the work has historically been performed by covered Agreement employes. See, e.g. Third Division Awards 25693, 25409, 25077. In the instant case, there is nothing in the Agreement which reserves the work at issue to the classification herein. Therefore, it was incumbent upon the Organization to prove that a past practice existed, since, as noted, the Agreement does not guarantee the assignment to Claimant. What this Board said in Third Division Award 20425 is applicable here:
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> > 'It is well established that Claimant must bear the burden of proving exclusive jurisdiction over work to the exclusion of

> others. This Board has also found that when there is a jurisdictional question between employees of the same craft in different classes, represented by the same Organization, the burden of establishing exclusivity is even more heavily upon Petitioner. (Awards 13083 and 13198).'
>
> The Agreement does not specifically reserve the work on the Russell Snow Plow to Machine Operators in the Track Sub-Department. Given that the assignment here 'is a jurisdictional question between employees of the same craft in different classes, represented by the same Organization, the burden of establishing exclusivity is even more heavily upon Petitioner' (Third Division Award 20425, supra). That burden has not been met."

We agree with these Awards. Based on the evidence in the instant case, we find that the Organization has been unable to meet its basic burden to prove that snow removal work is specifically reserved to the classification of the Claimant (Section Laborer) or that there is sufficient past practice to prove that the Claimant is entitled to the work. Therefore, we find that the claim must be denied.

AWARD

Claim denied.

ORDER

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 22nd day of July 2002.