

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36762
Docket No. MW-36033
03-3-00-3-140

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

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Burlington Northern Santa Fe Railway Company
((former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Welding Sub-department forces to perform overtime Track Sub-department work (clearing snow from track switches) on the Culbertson Section on February 25 and 26, 1998 instead of calling and assigning Track Sub-department employee G. D. Marchwick (System File B-M-604-H/MWB 98-08-05AA BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. D. Marchwick shall now be compensated for “. . . sixteen (16) hours pay at one and one-half times the Track Inspector’s rate 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 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.

On February 25 and 26, 1998, the Carrier used Welding Sub-department employees Head Welder W. Nelson and Grinder Operator C. Rudolph to supplement the Culbertson Section to remove snow from switches rather than calling the Claimant who was assigned as a Relief Track Inspector in the Track Sub-department and who was observing his rest day. The Claimant was senior to Nelson and Rudolph.

This is a dispute between employee groups concerning the assignment of snow removal work. Absent a clear reservation by Rule of that work only to the Claimant's class of employees, the Organization is required to demonstrate that such snow removal work has been historically and exclusively performed by that class of employees on a system-wide basis. See Public Law Board No. 3460, Award 65:

"The Board is constrained to note that the Organization is taking the position that not only is snow removal work reserved exclusively for employees on the Maintenance of Way category but also within that group, exclusively reserved to Track subdepartment only by historical systemwide exclusivity. Such evidence, however, is not in the record. Petitioner has failed to indicate that the work of snow removal belongs exclusively to any class of employees, much less the Track subdepartment group. Further, there is no rule support for the position that the work in question belongs to the Claimant herein. . . ."

Here, there is no Rule that clearly reserves snow removal work only to the Claimant's class of employees. Further, there is no evidence that the Claimant's class of employees has historically and exclusively performed this work on a system-wide basis. Characterizing this claim as a seniority dispute does not permit the

Form 1
Page 3

Award No. 36762
Docket No. MW-36033
03-3-00-3-140

Organization to avoid the consequences of the required burden of proof in this kind of dispute.

Because the Organization has not met its burden of proof the claim will 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 29th day of December 2003.