Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No.38021
Docket No. MW-36972
06-3-01-3-610

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

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned Mechanical Department employes to plow snow off right of way at Gibson Relay Yard and Michigan Avenue Yard on December 24, 1999, January 17, 19 and 26, 2000, instead of assigning Vehicle Operator S. A. Gengnagel to perform the scope covered work (Carrier's File MW-00-001).

(2) As a consequence of the aforesaid violation, Vehicle Operator S. A. Gengnagel shall now be compensated '. . . for 8 hours straight time for each of the dates of December 24, 1999, January 17, 2000, January 19, 2000 and January 26, 2000.'"

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.

As Third Party in Interest, the International Brotherhood of Electrical Workers was advised of the pendency of this dispute and chose to file a Submission with the Board.

This dispute concerns the Carrier's assignment of non-scope covered employees to perform snow removal work - specifically, according to the Organization's June 26, 2001 letter, ". . . a Round House employee plowing snow around Gibson and Relay Yards in December of 1999 and January 2000."

The Carrier defends on the ground that the snow removal work performed has also traditionally been performed by other employee groups.

The Scope Rule provides that "The following work is reserved to BMWE members: . . . snow removal (track structures and right of way). . . ."

Putting aside disputes concerning when the work was actually performed, the Organization failed to carry its burden for two reasons.

First, in its June 26, 2001 letter, the Organization states the following:

* * *

> "It is our position the carrier violated the Scope of our Agreement when a Round House employee was utilized to operate a truck with an attached plow to remove snow in the above mentioned [Gibson and Relay] yards. . . .
>
> * * *
>
> . . . The term 'right of way' in our eyes has been all excess [sic] roads to and from the railroad property. I disagree with your position

> that the Round House employees have historically performed this work. The fact remains that BMW employees have, and do perform the work of snow removal in all the areas round Gibson and Relay Yards. This work is not limited to just the right of ways, i.e., roads and parking areas are included. . . ."

The Organization thus argues that its scope covered work for snow removal is ". . . not limited to just the right of ways, i.e., roads and parking areas are included." But that is not what the Scope Rule says. If there is an exclusive reservation of work to the covered employees by the Scope Rule for snow removal, by the plain terms of the Scope Rule, that work is limited only to ". . . snow removal (track structures and right of way). . . ." Thus, ". . . roads and parking areas . . ." are <u>not</u> included in any exclusive reservation of snow removal work under the Organization's Scope Rule. See Public Law Board No. 6510, Award 6 involving the same language ("The normal reading of this entire phrase must be that the only snow removal expressly reserved . . . to BMWE represented employees is snow removal from track structures and right of way. . . .").

Second, without an exclusive reservation of work beyond that specifically provided in the Scope Rule ("track structures and right of way") the Organization has the burden to demonstrate that scope covered employees have performed the disputed work to the exclusion of all others. While the Organization appears to take that position, the Carrier asserts the opposite. For example, in its November 1, 2001 letter, the Carrier states:

> ". . . [T]he Maintenance of Equipment Employees represented by the NCF&O had historically plowed the Gibson General Office Building parking lot and have historically had plows on M of E maintenance trucks in order for them to reach their destination during snow storms. . . . The NCF&O is not the only Organization in the M of E Department that operates vehicles that have snowplows on them. It has been the historical practice in the M of E Department that any employee in that department could be assigned to plow the parking lot, etc. This includes members of the . . . IAM . . . IBEW . . . ARASA . . . TCIU-Carmen . . . IBB, and the . . . SMWIA. At one point or another, the Superintendent of Equipment has directed

members of the Organizations mentioned above to plow snow either on a day to day basis or event to event basis. This has been a past practice that has gone on well in excess of twenty-five plus years."

* * *

The IBEW's position is consistent with the Carrier's assertions. Given that dispute of critical facts concerning the historical performance of the work, the Organization cannot prevail.

Based on the above, the Organization has not carried its burden requiring that this claim 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 7th day of December 2006.