

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41002  
Docket No. MW-40992  
11-3-NRAB-00003-090294**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference**  
**PARTIES TO DISPUTE: (**  
**(Union Pacific Railroad Company (former Chicago &  
( North Western Transportation Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier assigned employees of the Transportation Department BO51 crew to perform Maintenance of Way and Structures Department work (clean snow from switches) in the Boone Yard on February 11, 2008 (System File C-0801C-302/1496698 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants L. Hudson, R. Bennett, G. Hudson and D. Newhouse shall now each be compensated for six (6) hours at their respective overtime rates 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.

This claim protests the Carrier's use of Transportation Department employees (BO51 switch crew) rather than the Claimants (Maintenance of Way and Structures Department employees headquartered at Boone, Iowa, who regularly work from 8:00 A.M. to 4:30 P.M., Monday through Friday) to remove snow from six switches at the Boone Yard on Monday, February 11, 2008, between 6:00 P.M. and midnight. When the Carrier initially denied the claim based upon a failure to prove such work was actually performed as alleged, the Organization provided two signed statements from one of the Claimants indicating that he observed the work being performed during the evening of February 11, and was told by a named employee of the switch crew the following day about the assignment and its specifics, including the equipment used (a picture was also provided) as well as the fact that a supervisor was requested to call out Maintenance of Way forces, but refused to do so. In its final denial, the Carrier stated that cleaning switches is a non-class specific job and that train crews have been doing it for years as part of their job, indicating that manager statements to this effect were attached; no such statements appear in the record.

The Organization contends that cleaning snow from switches is scope-covered work (maintenance of track) specifically reserved to employees of the Track Sub-department under Rules 1, 2 and 3 of the Agreement, and that this is not a general Scope Rule, citing Third Division Award 36932 and Public Law Board No. 1844, Awards 16, 17, and 64. It asserts that the Claimants were entitled to be called out for the work under Rule 31(A) because they were available and within the gang that regularly performs this work, and that monetary reimbursement is the appropriate remedy for this loss of overtime work opportunity, relying on Third Division Awards 17842, 17952, 27593, and 28020.

The Carrier argues that (1) Rule 1 has been held to be a general Scope Rule that does not specifically reserve work to employees, citing Third Division Award 28789 (2) the Organization failed to meet its heavy burden of proving that work of this nature (removal of snow around a yard switch by an air device) is considered maintenance work under the Agreement and (3) it has been performed exclusively by employees by custom or historical practice to the exclusion of all others on a

system-wide basis, relying on Third Division Award 32646 and Public Law Board No. 6302, Awards 11 and 12. The Carrier points out that there was no evidence of custom or practice provided in this case, requiring denial of the claim. It also contends that the claim is excessive because the Claimants were fully employed, and a monetary remedy would be unjust enrichment, citing Third Division Award 19153.

The issue that must be resolved in this case is whether the work of cleaning snow from switches in a Carrier yard is “maintenance of track” work exclusively reserved to employees under Rule 1(B) of the Agreement, which provides, in pertinent part:

**“RULE 1 - SCOPE**

- B. Employees included within the scope of this Agreement in the Maintenance of Way and Structures Department shall perform all work in connection with the construction, maintenance, repair and dismantling of tracks, structures and other facilities used in the operation of the Company in the performance of common Carrier service on the operating property. . . .”**

A careful review of the record convinces the Board that the work in dispute is encompassed within the work reserved to Maintenance of Way and Structures Department employees in Rule 1(B) because snow removal from track areas has been found to be “maintenance of track” work, and this Rule has been interpreted to clearly reserve such work to employees. See Public Law Board No. 1844, Awards 17 and 64. As noted in those Awards, the absence of evidence of historical practice or custom is irrelevant in the face of clear Agreement language. However, the Carrier’s statement that cleaning switches has been done by train crews for years was just an assertion without direct evidentiary support, and does not relate specifically to snow removal from switches in a Carrier yard, as was involved in this case. The Carrier’s reliance on Third Division Award 28789 is misplaced, because the Scope Rule interpreted therein does not contain the same language as that reprinted above and specifically addressed in the Awards of Public Law Board No. 1844. There is no dispute that (1) the Claimants regularly performed basic track maintenance work, including snow removal, at Boone Yard, (2) they were not called out to perform this work under Rule 31(A) and (3) because it was done outside their regular hours, it represents a lost overtime opportunity for them. Accordingly, we

conclude that the Carrier violated the Agreement by assigning such work to Transportation Department employees rather than the Claimants, and we sustain the claim.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 20th day of July 2011.