

Award No. 4949
Docket No. MW-4906

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BOSTON AND MAINE RAILROAD

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: 1. Snow removal work is not an exclusive property right of Maintenance of Way Employees.

2. Carrier did not violate any rule of its agreement with the Brotherhood of Maintenance of Way Employees when it assigned other than section foreman Worden and his crew to perform snow duty on Section 252 between the hours of 12:00 Midnight, January 2, 1948 and 6:30 A.M., January 3, 1948 at Woodsville, N. H.

3. Section Foreman Worden and the seven members of his crew are not entitled to be paid six (6) hours at double time rate in addition to the amount they have already received for time worked on the above dates, as they have claimed.

POSITION OF CARRIER: This is a claim which is being submitted ex parte to the Third Division for the express purpose of expediting an interpretation of the pertinent rules of an agreement between the Boston and Maine Railroad and the Brotherhood of Maintenance of Way Employees. The claim of the Carrier is predicated upon a dispute between the aforesaid parties, identified on the property as claim MW-76.

Carrier agreed to join in submitting Claim MW-76 to the Third Division of the National Railroad Adjustment Board. The dispute presented by Claim MW-76 is equally as important to Carrier as it is to the Employees. An early determination of the claim being essential, Carrier afforded the Organization a considerable period of time to prepare its portion for the joint submission, having agreed on procedure on February 14, 1949, as shown by letter from Chief of Personnel to General Chairman (Exhibit A).

After waiting until June 22, 1949 for the Organization to proceed as agreed upon on February 14th, Carrier addressed another letter to the General Chairman in which a specific date was set (July 6, 1949) after which, if the Organization was not prepared to proceed, Carrier would have to submit the dispute ex parte. (Exhibit B). The General Chairman 'phoned and requested an additional thirty (30) days, confirming said request and its granting by Carrier, in a letter dated June 29, 1949, (Exhibit C). Carrier also confirmed the conversation by letter dated July 1, 1949, (Exhibit D) and set a final date, August 6, 1949. No word was received by Carrier as of August 6, 1949 regarding an exchange of submissions or a request for an additional extension of time. Carrier, therefore, addressed a letter on August 6th to the General Chairman advising that Carrier could not wait any longer and the dispute would be submitted ex parte. (Exhibit E).

regular work period will be allowed a minimum of two (2) hours at rate of time and one-half. If held on duty in excess of two (2) hours, time and one-half rate will be allowed on the minute basis."

Your Board will note from the above quoted rule that the Foreman and crew of Section No. 253 were only paid at the time and one-half rate since they did not work continuously following their regular assignment on January 2, 1949. They had been released for approximately 6 hours before reporting for duty on Section No. 252 at midnight.

Obviously, the Carrier found it more economical to use the members of Section Crew No. 253 at the time and one-half rates than if the Carrier had used Section Crew No. 252 since they would have been paid at the double time rates.

That was the sole purpose of the Carrier in assigning this work to Section Crew No. 253 in this instance.

We contend that the Carrier's violation of the seniority rights of Section Foreman Worden and the members of his crew is plainly evident and we ask that your Board sustain our claim.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The Carrier in this case has come to this Board for an interpretation of the Maintenance of Way Agreement and the manner of its application in relation to snow handling during emergent periods. The case giving rise to the dispute was subsequently brought to this Board in Docket MW-4907 which was on this date determined by Award No. 4948. For all practicable purposes the issues in the two disputes brought here are identical. The reasoning in Award No. 4948 is decisive of the present claim. We deny claim (1) in the form presented for the reasons stated in the Opinion and Findings in Award No. 4948. We sustain claims (2) and (3).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there was no violation of the Agreement.

AWARD

Claim (1) denied in the form presented for the reasons stated in the Opinion and Findings in Award 4948. Claims (2) and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1950.