

Award No. 5875
Docket No. MW-5810

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the effective agreement when they deprived Trackmen Erwin Marshall, Charles Parrott and David Robare, of the opportunity of performing overtime work on their assigned territory on February 15, 1950;

(2) The Trackmen Erwin Marshall, Charles Parrott and David Robare, each be allowed one (1) hour's pay at their respective straight time rate and two (2) hours' pay at their respective overtime rate because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Trackmen Erwin Marshall, Charles Parrott and David Robare are regularly assigned to Section L-61.

On February 15, 1950, the Carrier assigned members of Bridge and Building Gang No. 2, to perform the work of cleaning switches at Ausable Forks, New York, which is a part of Section L-61. Six (6) man hours were consumed by the Bridge and Building Department employees while so assigned.

Claimants were required to suspend work at the close of their regular assigned hours, instead of being assigned to perform the work of their class at Ausable Forks.

The claimants and the Bridge and Building Gang No. 2, have identical quitting times.

Claim was filed in behalf of each of the above named Trackmen for one hour's pay at straight time rate and two hours' pay at the time and one-half rate because of the Carrier's improper assignment. Approximately one (1) hour would have been consumed by each of the claimants in traveling between their headquarters point and the work site had they been assigned to perform the work in dispute.

Claim was declined.

The Agreement in effect between the two parties to this dispute dated November 15, 1943 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

stated to the dispatcher that if the switches at Ausable Forks were as filled with snow as the ones at Peru that it would delay the train. As it was not definitely known whether or not the switches would need cleaning, as they had already been cleaned earlier in the day by the section men, a contact was made with the foreman of a B&B gang stationed at Ausable Forks and he was instructed to inspect the switches (there are five (5) at Ausable Forks) and if in his opinion they needed cleaning, he was to use his men for that purpose. The section gang at Peru had already gone off duty.

POSITION OF CARRIER: Under conditions such as existed that date, wherein there was no definite knowledge that the switches at Ausable Forks needed cleaning again, the Carrier is of the opinion that there is nothing in the working agreement which compels it to send a section gang twelve and one-half (12.5) miles to ascertain these conditions. It is not unusual to use employees, other than section men, to shovel snow from switches. In the territory where Ausable Forks is located the weather is often very severe with below zero temperatures and heavy snowfall and when this condition exists it is expedient that all employees lend their efforts to keep traffic moving. Carrier believes this service by the B&B employees was of an emergency nature and that the section men have no claim to same. It is noted that the Organization is seeking to recover two (2) hours' pay at the overtime rate. The overtime rate is only for services performed and has been so ruled in many decisions rendered by the Third Division. Claimants herein named performed no service.

Management affirmatively states that all matters referred to in the foregoing have been discussed with Committee and made part of the particular question in dispute.

OPINION OF BOARD: The claim here is on behalf of three trackmen on account of the failure of the Carrier to call them to clean snow from switches for a train at Ausable Forks, a point on a branch line extending to that point from Plattsburg. The work was performed by Bridge and Building employees. If the work had been performed by Claimants it would have been necessary for them in overtime to have traveled from Peru 12.5 miles distant by motor car, train, or automobile, cleaned the switches, and then returned to Peru where they had gone off regular duty at 4:00 P. M. This was after 4:00 P. M.

Some time earlier in the day the trackmen had cleared the switches. After 4:00 P. M. the train for Ausable Forks passed through Peru. At Peru the Conductor indicated that if conditions were the same at Ausable Forks as at Peru there would likely be delay on account of snow in the switches. Thereafter the dispatcher at Peru asked the Bridge and Building foreman at Ausable Forks to inspect the switches and if he thought it necessary to have his men clear them. The time of notification is not disclosed. It is reasonably to be inferred that the fact as to whether or not switch cleaning would be necessary was not known at the time but would have to be ascertained thereafter. Necessity was thereafter ascertained and the Bridge and Building employees cleaned the switches. The extent of cleaning necessary and the time consumed is not disclosed but from the showings made it appear not to have been very extensive.

There is no doubt that the work involved here was ordinarily work of trackmen. There are decisions, however, which indicate that it is not exclusively and under all conditions such. In decisions which have been cited it is pointed out that in hampering emergencies in order to keep trains moving and to avoid delays others may properly be called upon to remove snow from switches. The record discloses that Bridge and Building employees were, over a period of years, used to clear snow from tracks and switches. The conditions under which such work was done are not shown, it is true, but the fact is that they did the work, and the point is that on this property there was a practice indicating that switch cleaning was not exclusively and under all conditions work of trackmen.

Under the decisions, the evidence of past practice, the confronting condition, and the burdens which would have been imposed by transporting these men to perform a comparatively negligible amount of work it would appear that the Carrier did not violate the Agreement when it failed to call the Claimants to clear the switches at Ausable Forks.

There is no purpose to say that the custom and practice referred to permits the Carrier under any and all conditions to place this kind of work where it will. The purpose is to say only that when conditions of emergency arise which dictate a departure from customary and regular handling this recognized practice on the property permits a departure and allows work to be performed in conformity with the practice.

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 Employes involved in this dispute are respectively Carrier and Employes 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 the claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1952.