

Award No. 10797

Docket No. MW-10195

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

BOSTON AND MAINE RAILROAD

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

(1) The Carrier violated the effective Agreement when, in lieu of assigning extra crew foreman's work to Extra Crew Foreman Paul F. Walsh, it assigned such work to Assistant Track Foreman E. A. Mahoney on January 12, 1957 and to Trackman A. Stebbins on January 13, 1957.

(2) Extra Crew Foreman Paul F. Walsh now be allowed twenty eight and one half (28½) hours' pay at his time and one half rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, Mr. Paul F. Walsh, was regularly assigned to the position of Extra Crew Foreman on District No. 1, Fitchburg Division, with headquarters at Fitchburg, Massachusetts. His extra crew was assigned to a 40-hour work week, consisting of five days, eight hours each, with Saturdays and Sundays as designated rest days.

Traditionally, the operation of a snow plow used in connection with snow removal work has been recognized as work belonging to the senior extra crew foreman on the district where such work is being performed.

Prior to the expiration of the work period on Friday, January 11, 1957, the Claimant, in a telephone conversation with Track Supervisor Shaw, was instructed to and did assign Assistant Foreman E. A. Mahoney, a member of his (Claimant's) crew, to operate a snow plow on the following day, Saturday, January 12, 1957. During the course of the telephone conversation, the Claimant inquired as to what duties he would be assigned on January 12, 1957 and was advised by the Supervisor that he (the Claimant) was not included in any plans for that day.

Similarly, on Sunday, January 13, 1957 Trackman A. Stebbins, also a member of the Claimant's crew, was assigned by the Carrier to operate a snow plow on that day.

he would not have rights to make claim that he was deprived of performing service on this date — Saturday, January 12, 1957. Extra Crew Foremen and Section Crew Foremen have assigned responsibilities in snow removal. On Saturday, January 12, 1957, Assistant Section Foreman Mahoney had a scheduled assignment of work, which he performed. Similarly, so did the claimant. Therefore, Claimant Walsh was not deprived of working on Saturday, January 12, 1957.

Relative to Sunday, January 13, 1957, investigation revealed that Claimant Walsh did not complete his tour of duty, which started at 11:30 P. M. on Saturday, January 12, 1957, until 8:30 A. M. on Sunday, January 13, 1957. Therefore, because of the fact that the snow removal work performed by Trackman Stebbins was required and did commence at 6:00 A. M. on that date, then the claimant was not available, account already working in rest day service himself at the time Snow Plow Operator Stebbins commenced work at 6:00 A. M. on Sunday, January 13, 1957.

Therefore, because the claimant did not have any right over the men used, who owned the snow plow assignments on either rest day, and because he was not available for the Sunday work anyway, there is no justification for claim.

It is respectfully requested that the claim be denied in its entirety.

All data and arguments contained herein have been presented to the Committee in conference and/or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The record is clear on the matter that heretofore snow plow (track) was work within the scope of the Claimant. Also, there is no dispute that the Claimant had seniority rights, nor is there any dispute in this instant regarding the seniority rule as it may apply to overtime work.

The argument of the Carrier that the Claimant was not available is not supported by the evidence.

The Carrier contends that regularly assigned snow plow operators were used namely Assistant Foreman E. A. Mahoney on Saturday, January 12, 1957 and Trackman A. Stebbins on Sunday, January 13, 1957 in conformity with Rule 30. No supportive evidence was introduced that Mahoney and Stebbins were in fact regularly assigned snow plow operators.

It appears clear that the rule of seniority and the fact that the operation of snow plow (track) is within the scope of the Claimants work should have prevailed in this instant.

The only matter which is not clear to this Board is the request for compensation by the Claimant for a total of 28½ hours at time and a half.

The total number of hours worked by Mahoney and Stebbins was 28½ hours. However, the record indicates that the Claimant was assigned to snow removal duties on Saturday 11:30 P. M. to 8:30 A. M. on Sunday, January 13 and did work for 9 hours. It follows then that the Claimant could have suffered only a maximum loss of 19½ hours.

The claim is allowed for a period of 19½ hours at pro rata pay.

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 the Carrier violated the provision of the Agreement.

AWARD

Claim sustained to the extent specified in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1962.