

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19217
Docket Number MW-17294

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Pittsburgh & Lake Erie Railroad Company and
(The Lake Erie & Eastern Railroad Company

STATEMENT OF CLAIM: (1) Claim of Trackmen J. A. Castellucio, A. Delisio and John Moore for eight (8) hours' pay at their respective time and one-half rates account of train crew of yard assignment 323 (working a third trick assignment) cleaning snow and ice from switches at various points in the McKees Rocks Yard on January 23, 1966. (System File MW-19)

(2) Claim of Trackmen Angelo Tucci, Peter Bahney and Joe Perez for eight hours' pay at their respective time and one-half rates account of train crew of yard job 222 (working a second trick assignment) cleaning snow and ice from various switches in the McKees Rocks Yard on January 24, 1966. (System File MW-29).

OPINION OF BOARD: Claimants set out in Claim No. 1 are members of Maintenance of Way Gang No. 205, headquartered at McKees Rocks, Pa.; the Claimants listed in Claim No. 2 are members of Maintenance of Way Gang No. 204, headquartered at the same location. Normal work assignment of these gangs is normally a Monday through Friday work week. Saturday, January 22, 1966, snow began to fall and this snow continued intermittently through January 23. The skies cleared on January 24. Sunday, January 23, 1966, members of the train crew of Yard Assignment 323 were used to clean snow and ice from switches at various points in McKees Rocks Yard. On Monday, January 24, 1966, members of the train crew of Yard Job 222 were used to clean snow and ice from various switches on McKees Rocks Yard. The Organization contends that the work of cleaning snow and ice from switches is one of the customary and traditional duties of Trackmen. The Organization further contends that the involved work is work belonging to the Claimants under the Scope Rule. Carrier denies that this work is reserved exclusively to Maintenance of Way Employees and that the involved work has not been performed historically, traditionally or customarily by members of this Organization. To the contrary, Carrier alleges that removal of snow and ice from tracks and switches has been traditionally performed by train crews when incidental to the normal movement of cars.

However, in defense of this claim, Carrier relies upon trainmen Rule 43(a), which is:

"(a) Trainmen and yardmen shall not be required to clean switches of snow or ice, except in case of emergency.

"NOTE: The word 'emergency' in this case means company will get section men as soon as possible to do this work."

By injecting this rule into the defense of this case, Carrier has called upon this Board for an interpretation of said Rule 43(a). In interpreting said rule and in applying said rule to the record in this case, this Board finds that the Organization is entitled to a sustaining award in this instance. The record herein is void of any evidence showing that Carrier made any attempt to get section men as soon as possible to do the involved work that was being performed by members of train crews. Rule 43(a) specifically states that Trainmen and Yardmen shall not be required to perform this work, except in case of emergency; in the event of an emergency, this Rule requires Carrier to call section men as soon as possible to do this work.

Had Carrier not injected this Rule into this dispute as a defense, the result might be different under authority of the Awards holding that members of train crews may remove snow and ice when incidental to the movement of their own cars.

For the foregoing reasons, this claim will be sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killum
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1972.