

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19457  
Docket Number MW-19205

Arthur W. Devine, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Norfolk and Western Railway Company (Lake Region)

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

(1) The Carrier violated the Agreement when, on August 7, 22, 23, 26, 28, September 9, 12, 15, 16, 24, 29, October 1, 3 and 7, 1969, it assigned or otherwise permitted other than track department employees to perform the work of cutting and clearing trees, brush and weeds from its right-of-way at Muncie, Indiana; Hume, Ohio and Bloomington, Illinois.

(2) Because of the violations referred to in Part (1) of this claim;

(a) Mower Operator R. Blanton and each employee assigned to Section 7 on August 7, 22, 23, 26 and 28, 1969 be allowed an equal proportionate share of ninety (90) hours at their respective straight time rates. (System File MW-LIM-69-2)

(b) Sectionmen E. Folk and V. Houts each be allowed sixteen (16) hours' pay at their respective straight time rates and Sectionmen A. Truesdale and D. E. Green each be allowed twelve (12) hours' pay at their respective straight time rates. (System File MW-LIM-69-3)

(c) Sectionman B. P. Windle be allowed fifty-four (54) hours' pay at his straight time rate. (System File MW-PAX-69-2).

OPINION OF BOARD: The claim herein arose because the Carrier assigned Communication and Signal employees the work of cutting and clearing trees, brush and weeds from its right of way at Muncie, Indiana, Hume, Ohio, and Bloomington, Illinois.

The Petitioner contends that Maintenance of Way employees have the right to perform the work of cutting and clearing trees and brush on Carrier's right of way. Four prior awards of this Division, involving the same parties and the same agreement, have upheld the contention of the Petitioner in this respect; namely, Awards Nos. 17051, 17059, 17100 and 17199. The Carrier contends that the four awards cited were based on erroneous premises and that Award No. 17003, which denied the claim of the Petitioner should be considered controlling.

We have reviewed all of the Awards, and we are unable to find Awards Nos. 17051, 17059, 17100 and 17199 to be in palpable error. The prior awards of the Division and the record in the dispute, including the correspondence involving a claim that arose in 1957, is convincing that the work involved was Maintenance of Way work.

In some of our prior awards we have found it not to be in violation of the Agreement for Signalmen and Communication employees to cut brush and trim trees that may be interfering with signal and communication wires. However, there is no proof in the record in our present dispute that Carrier's signal and communication equipment became inoperative because of brush interfering with such lines. Moreover, it is doubtful that the amount of time involved in the claim would have been consumed by Signal or Communication employees simply eliminating interference.

The Agreement was violated and the 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 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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: E. L. Killian  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1972.

CARRIER MEMBERS' DISSENT TO AWARD NO. 19457  
DOCKET NO. MW-19205

The Awards cited by the majority as not in palpable error are not analogous to the situation in the instant case. As pointed out to the Neutral in these prior Awards, the weed and brush cutting was performed by outside contractors and was a general clean-up operation, the result of some deferred maintenance. It was not, as in this case, the removal of brush and other growth that interfered with signals, wire lines and other related equipment serviced and maintained by signal and communication department employees.

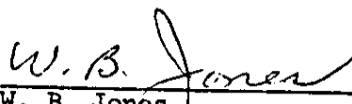
The Neutral's attention was also called to previous Awards in which he participated wherein claim by the Signalmen for punitive pay when required to cut trees and brush growing up through the signal line wires was denied.

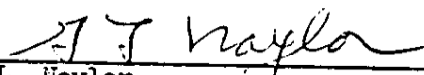
In this case in the handling on the property the employees did not deny that the work was in connection with the cleaning of communications and signal lines.

The employees did not meet their burden of proof while the Carrier, on the other hand, showed by sufficient probative evidence that such work had not been historically and traditionally performed by them to the exclusion of others. We dissent.

  
H. F. M. Braidwood

  
P. C. Carter

  
W. B. Jones

  
G. L. Naylor