NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19841
Docket Number MW-19850

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Duluth, Missabe and Iron Range Railway Company

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

(1) The Carrier violated the Agreement when, on April 26, 1971, it used Track Maintenance Supervisor A. Fena instead of Carpenter-Truck Driver H. Stauty to transport track machinery from Proctor to Steelton (System Claim 10-71).

(2) Carpenter-Truck Driver H. Stauty be allowed eight (8) hours' pay at his straight time rate because of the aforesaid agreement violation.

OPINION OF BOARD: The claim is that Rule 1, Scope, of the Agreement was violated in that, in order to transport track machinery by truck from Proctor to Steelton, Minnesota, the Carrier used a Track Maintenance Supervisor to drive the truck instead of using claimant who was a regularly assigned B&B carpenter truck driver. The subject machinery was a small track machine which was transported in a supervisory vehicle (pick-up truck) for a distance of about ten miles.

The Carrier denied the claim on the grounds, inter alia, that the disputed work did not belong to claimant under the Agreement and that it is and has been past practice on the property for supervisors to perform such work. In the context of this denial, although the Carrier had the burden of proof as to its assertion of past practice, the Organization still had the burden to prove by probative evidence that the work belonged to claimant. Furthermore, since the Carrier's denial directly challenged the fundamental basis of the claim, the Organization was put on clear notice that it must produce positive evidence concerning claimant's rights to the disputed work. However, the record shows that, while the Petitioner dwelled on the subject of past practice, the Petitioner dealt with claimant's rights to the work with only a few vague references and no evidence at all. Consequently, on the whole record, we must conclude that Petitioner has not offered sufficient evidence to establish that the disputed work belonged to claimant. We shall therefore dismiss the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

The claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1973.