

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20186

Docket Number MW-20001

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Illinois Central Gulf Railroad Company

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

(1) The Carrier violated the Agreement beginning on May 24, 1971 when it used other than track department employees from Section 14 to clean tracks and right-of-way on Section 14, Chicago, Illinois (System File C-82-T-71/Case No. 781).

(2) Section Laborers M. Sledge (515386), W. J. Howell (517128), C. Tapps (700278), R. L. Henderson (514942), R. Safford (7506), L. Martin (16316), G. Chandler (19157), T. B. Zavala (19941), T. B. Woods (33074) and J. Miller (500088) each be allowed eight hours straight-time pay for May 24, 25, 26, 27, 28, June 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18 and for each day subsequent there-to on which other than track department employees are used for said cleaning work.

OPINION OF BOARD: The Organization alleges a violation of its Scope and Force Reduction Rules, by Carrier's use of other than track department employees to clean tracks and rights of way.

During the handling of the matter on the property, Carrier consistently urged that the work here under consideration was not reserved exclusively to employees under the Agreement.

The Scope Rule is general in nature. Under that circumstance, by virtue of numerous Awards of this Board (many of which have dealt with these same parties) the Claimant must show an exclusive performance of the work in question by employees covered by the Agreement. See, for example, Award 19903 (Bergman).

In Award 19429 (Blackwell) this Board considered a claim by this Organization, on this same property, regarding an alleged agreement violation concerning track cleaning. The Award noted that the Claimant had the burden of proof, which included a showing of exclusivity, and found that under the record, there under consideration, the Organization had not carried their burden.

We have thoroughly reviewed the record of this docket, and we reach a similar conclusion. We are unable to state that the Organization has demonstrated an exclusive performance of the work in question, and accordingly, the Organization has not carried its burden. Under these circumstances, we will dismiss the claim for failure of proof.

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 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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.