

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24029
Docket Number MW-23933

T. Page Sharp, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Seaboard Coast Line Railroad Company

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

(1) The Carrier violated the Agreement when on February 18 and 19, 1979, it assigned Section Foreman J. L. Magee instead of Trackman T. L. Boykin to perform the work of cleaning ice and snow from switches at Franklin, Virginia (System File C-4(36)-TLB/12-27(79-45) J).

(2) Trackman T. L. Boykin be allowed thirteen and one-half (13-1/2) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: Because of a heavy snowstorm on February 18, 1979 around Suffolk, Virginia, most of Carrier's trains were annulled in that area. The anticipated use of the maintenance of way force was not necessary. However, one of the Carrier's shippers advised Carrier that it would continue its switching operations on an around-the-clock basis.

Upon learning that the shipper would continue to operate during the snowstorm, Carrier dispatched the Section Foreman to the shipper's facility to keep in contact with the operation at that location and to assist the shipper if needed because of the severe weather.

When the Section Foreman arrived at the Shipper's facility he was available to ride the shipper's engine and assist in any manner concerning the interchange between shipper tracks and the railroad's tracks. During the time that the Section Foreman was assisting the shipper he cleaned ice and snow from the switches that united the Carrier's track with those of the shipper. The Claimant, a trackman, states that he should have been called for this work.

The Organization cites the violation of a number of Agreement rules, but the crux of the matter concerns whether or not the Scope Rule has been violated. The Scope Rule, Rule 1, of the Agreement is generalized. Rule 5 of the Agreement which implements the Scope Rule assigns Foremen to Rank 1 in the Track Subdepartment and Trackmen to Rank 6. Obviously the individual classifications establish seniority within departmental lines by function. But nowhere is there a definition of the work that can be said to be the exclusive function of that classification. Therefore, the Board must look to the practice of the concerned classification in conditions such as existed on February 18, 1979.

There is some inherent disagreement in the content of the work performed by the Section Foreman on the night in question. The Petitioner claims for 13½ hours apparently on the ground that the Foreman cleaned switches during this time. The Carrier responds that the Foreman was at the property of the Shipper to render all possible assistance and in the course of his duty he may have cleaned switches. The truth of the nature of the duty is irrelevant because there is no proof that if the duty had been solely the cleaning of switches, such was prohibited by the past practice of the Carrier. There are assertions by the Carrier that Foreman had historically performed this kind of assistance in similar circumstances. The Petitioner states that it is not proper to remove a Foreman from his usual duties and assign him work that normally belongs to the classified employee who usually performs this work.

It is not usual that a Foreman should perform the duties of a class 6 Trackman even though both take their rights from the same Agreement. However, in emergency conditions such as existed on the night of February 18, 1979, absent a showing to the contrary, a Foreman can assist a shipper in keeping its operation functioning. If this assistance includes the removal of ice and snow from the Carrier's switches he may render this assistance without violating the Agreement.

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 Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November 1982.