

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26018

Docket Number MW-25730

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Green Bay and Western Railroad Company

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

(1) The Carrier violated the Agreement, when, on November 30, December 1, 2 and 3, 1982 and from December 6, 1982 through December 27, 1982, it assigned a Stores Department employe to cut brush on its right-of-way between Mile Post 10 and 19 on its New London Division and between Mile Post 198 and 82 on its main line.

(2) Because of the aforesaid violation, furloughed Machine Operator B. J. Byng shall be allowed pay at the machine operator's rate for an equal number of man-hours expended by the Stores Department employe in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: This Claim concerns assignment of work in cutting brush to other than a Maintenance of Way employe, commencing on or around November 30, 1982. Such work was performed by an employe represented by the International Brotherhood of Firemen and Oilers, which Organization was advised of the dispute, filed a Response and appeared at the Referee Hearing herein.

There is little or no dispute that the work involved, absent any other factors, is recognized by Rule 2 as work to be performed by Maintenance of Way employes.

There is, however, another significant factor to be considered. On October 9, 1964 an Agreement was signed by Representatives of the Carrier, the Firemen and Oilers, and System Federation #94, providing in pertinent part as follows:

"IT IS HEREBY UNDERSTOOD AND AGREED:

That effective October 15th, 1964 two Maintenance of Way Employees, i.e., George Heimke, Foreman, Material Store Yard and Wendel O. Nelson, Crane Operator, Material Store Yard, will be transferred from the Maintenance of Way roster to the Firemen and Oilers roster. The duties which they are presently performing will also be transferred to the Firemen & Oilers, such as: The Foreman will retain and be in charge of all Store Yard Material which is not presently under the jurisdiction of the Stores Department but

"which is now under the Maintenance of Way Agreement; the Crane Operator will retain the position of Crane Operator under the Firemen & Oilers. Each will hold their same relative seniority status at the bottom of the Firemen & Oilers roster as they held under the Maintenance of Way"

The Carrier maintains, without specific contradiction, that since 1964 work by the transferred Firemen and Oilers employee and his successor has included brush cutting work of the type described in the Claim.

The Organization points out that it was not a signatory to the 1964 Agreement and that its own Rules Agreement with the Carrier is dated 1974, which acts to supersede any previous arrangement as to work jurisdiction under Rule 2.

The Board concurs with the Carrier's view that the 1964 Agreement could hardly have been effectuated without the knowledge and concurrence of the Maintenance of Way Organization, providing as it does for the actual transfer of employees and "duties" from its coverage. Failure to challenge the results of such transfer for 20 years appears to solidify this view. There is no basis to assert that the 1974 Agreement cancelled the 1964 Agreement. In these circumstances, the Claim for work performed by the Firemen and Oilers employee must fail.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.