

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(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 it assigned other than B&B Department employes to clean the sand trap at the Duluth Storage Facility Building on December 19, 1984 (Claim No. 1-85).

(2) Because of the aforesaid violation, the senior furloughed B&B Mechanic on the Missabe Division shall be allowed two (2) hours and forty (40) minutes of pay at the B&B mechanic's straight time rate."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On December 19, 1984, an Ore Dock employee, assigned under a different Craft's Agreement noticed that a sand trap in his work area needed to be cleaned. He lifted the grate and removed debris from the trap. Petitioner herein charged that work of this nature is reserved to B&B Department employes assigned under its Agreement and filed a Claim for two hours and forty minutes pay for the senior furloughed B&B Mechanic.

The Organization contends that Supplement No. 9 to its Agreement, reading in part:

"SUPPLEMENT NO. 9

* * *

Jurisdiction of Work-Sheet Metal
Workers - Maintenance of Way Employees

* * *

SANITARY PLUMBING FACILITIES

B&B Employes will install, maintain and relocate all plumbing facilities."

reserves the work involved exclusively to its members.

We have previously had occasion to consider Supplement No. 9 with respect to the allocation of work listed therein to B&B employees in another context of work. In Third Division Award 23832, involving grade crossing repairs, we wrote:

"The issue in this dispute centers on one principal and two derivative questions. The first question to be answered is: Is Supplement 9 (supra) clear and unambiguous in allocating to B&B workers installation, renewal, replacement and repair of all (every kind of) grade crossings (with the exceptions as noted)?

* * *


Careful reading of Supplement No. 9 suggests no ambiguity with respect to assignment of work on grade crossings. It clearly states that 'B&B employes will install, renew, replace and repair all grade crossings...'..."

The structure of the Rule with respect to plumbing facilities is identical to its structure with respect to grade crossings. Accordingly, we are inclined to agree with results reached in Third Division Award 23832 with respect to the tasks under review here. Any uncomplicated reading of the simple language used in, with respect to plumbing facilities, Supplement No. 9 can produce no other result. Supplement No. 9, without ambiguity, clearly states that B&B employees will ... maintain ... all plumbing facilities. Lifting a grate and removal of debris from a drain trap most surely must be considered maintenance of plumbing facilities. The work was performed by an individual not working as B&B employee and was in violation of Supplement No. 9.

A W A R D

Claim Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Devel - Executive Secretary

Dated at Chicago, Illinois this 27th day of October 1988.

DISSENT OF CARRIER MEMBERS
TO
AWARD 27588 (DOCKET MW-27195)
REFEREE FLETCHER

The claim that:

"....Carrier violated the Agreement when it assigned other than B&B...." (Statement of Claim) (Emphasis added).

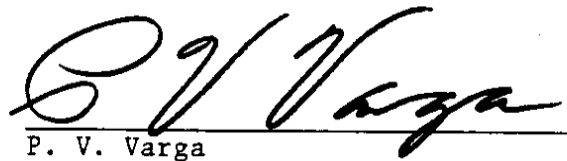
is clearly refuted in the Majority's recital of facts:

"On December 19, 1984, an Ore Dock employee, assigned under a different Craft's Agreement noticed that a sand trap in his work area needed to be cleaned. He lifted the grate and removed debris from the trap."

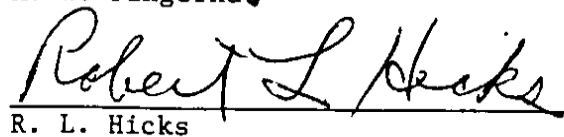
In the absence of evidence that Carrier had improperly assigned the work, the claim should have been found wanting proof of a violation. Third Division Awards 18652, 18996, 20721, 22091; Second Division Award 8234.

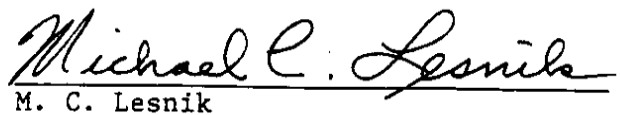
Carrier did not do what the claim asserts and it should not have been held liable.

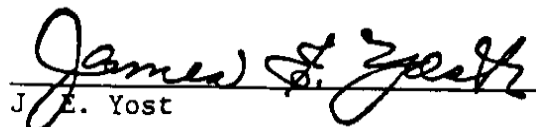
We Dissent.


P. V. Varga


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


J. E. Yost