

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister 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, on May 16, 1985, it assigned other than Track Subdepartment forces to perform right-of-way maintenance work at Two Harbors (Claim No. 1013).

(2) As a consequence of the aforesaid violation, the senior furloughed 'B' machine operator in the Iron Range Track Department shall be allowed eight (8) hours of pay at the 'B' machine operator'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 employee or employees involved in this dispute are respectively carrier and employees 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.

As Third Party in Interest, the Transportation Communications International Union was advised of the pendency of this dispute and filed a Submission with the Division.

The Organization contends the Carrier assigned employees other than Maintenance of Way forces to remove right-of-way stabilization material from the right-of-way at the approach to Dock 1. The Carrier's response to the initial Claim asserted the material removed was not bank stabilization material. Subsequently, the Carrier claimed the material at issue was debris left behind by the contractor who demolished several structures. Notwithstanding, the Organization bases its claim upon Rule 26, Classification of Work, Subsections (f) and (i) set forth below:

"(f) An employee assigned to the operation of roadway machines shall constitute a Roadway Machine Operator. B&B employees performing B&B work at the ore docks will operate machines used in the performance of B&B work, except crane work performed by Track Department employees at the ore docks.

(i) An employee assigned to performance of work in connection with construction, maintenance and dismantling of tracks, switches and maintenance of roadbed and right-of-way, removal of snow, ice and other obstructions shall be classified as a Track Laborer."

The burden of establishing that the material was, in fact, bank or right-of-way stabilization material lies with the Organization. Our review of this record forces this Board to conclude the Organization simply has not met this burden. Furthermore, Rule 26 (f) and (i) is a classification of work Rule which this Board has repeatedly held are not exclusive grants of work to a named classification. See Third Division Award 19921. In conclusion, we find no rule or practice basis to determine the work in question belongs exclusively to Maintenance of Way Employees.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.