

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(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 three (3) TCU Ore Dock Control Operators instead of B&B Mechanics to perform cleaning and preparation work incidental to sandblasting and painting of the stacker at the Duluth Lakehead Pellet storage facility on June 14, 1988 (Claim No. 20-88).

(2) As a consequence of the aforesaid violation, furloughed B&B Mechanics S. W. Heskin, J. C. Lee and R. D. Haedrich shall each be allowed pay for five (5) hours at the B&B Lakehead Storage Mechanic straight time rate of pay as well as the concomitant vacation and other benefits lost based on said hours."

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.

This Claim presents the somewhat novel question whether the precise same work which does not violate the Agreement when performed in one context by members of a different union can be violative of the instant parties' Agreement when performed by the same employees in a different context?

In May 1988, Carrier gave notice of its intention to contract out the surface preparation and painting of the "stacker" at its Duluth, Minnesota, facilities. The stacker is a large piece of mobile equipment which moves by means of wheels on rails. It travels alongside a feed conveyor from which it receives taconite pellets. By means of its operator controlled booms, conveyors and other mechanisms, the stacker directs the pellets to storage piles. The stacker is operated by Ore Dock employees.

In preparation for painting by the contractor, Carrier assigned certain preliminary work to be done on the stacker. Electricians, represented by the IBEW, were assigned to remove obsolete conduit and wire. Ore Dock employees, represented by the TCU, were assigned to clean out taconite pellets that had accumulated around the various conveyor transfer points. B&B mechanics, represented by the instant Organization, were assigned to clean up oil and grease that had accumulated under the luffing hoist gearbox.

Damages for the preparatory work performed by the electricians has not been sought as part of the instant Claim. Only damages for the work done by the Ore Dock employees is claimed. This work involved three employees for five hours each.

It is undisputed that the Ore Dock employees routinely do the work of cleaning out the accumulated taconite pellets in normal operations of the stacker. The Organization has not and does not now claim such work to be a violation of its Agreement with Carrier. Indeed, the General Chairman wrote, in correspondence on the property, "I whole heartily [sic] agree the Ore Dock employees clean for the salvage of taconite pellets."

Stripped to its essentials, the position argued on the property by the Organization is that the disputed work, which is properly performed by TCU employees in normal operations, became transformed into work exclusively reserved to B&B mechanics when it was performed as part of the preparation of the stacker for painting. The Organization argues that all work of cleaning or preparation incidental to painting is reserved by Rules 1, 2, 26 and Supplement No. 9 as well as by custom and practice.

The Carrier contended that none of the Rules cited by the Organization reserve the work to the Organization and that the undisputed past practice undermines the Organization's position. Carrier says that all of the work was allocated to the craft that normally performs the work.

Rules 1 (Scope), 2 (Seniority) and 26 (Classification of Work) have been previously reviewed by the Board. Several prior Awards have found these provisions to be general Rules which do not grant exclusive rights to the performance of specific types of work. See, for example, Third Division Awards 18471, 19921, 19969 and 27806. The evidence in the record also clearly shows that the TCU members are the only Carrier employees who have performed the disputed taconite pellet removal in the past.

Supplement No. 9 reads, in pertinent part, as follows:

"Jurisdiction of Work - Maintenance of Way -
Ore Dock Employees

Commencing November 1, 1977, maintenance work to be performed by ore dock employees or B&B Department employees at the Duluth Lakehead, Steelton, or Two Harbors ore storage facilities will be allocated as follows:

Ore Dock Employees

1. Maintenance and running repair of bucket wheel reclaimers, front end loaders, swing loaders, sweepers and other mobile equipment which may be assigned.
2. Maintenance and running repair of railmounted trapping machines.
3. Installation, maintenance and running repair of hydraulic systems.
4. Greasing of conveyor systems, except when performed in connection with installation of new idlers or equipment.

Bridge and Building Department Employees

1. Maintenance and repair of conveyor systems and equipment not specifically listed for ore dock employees above.

* * *

It is understood that the purpose of this Supplement is to assist in the orderly distribution of work between the crafts involved and is not to be interpreted as granting exclusive rights to work or infringing on any work rights belonging to other crafts."

The Organization argued that the stacker is not specifically listed among the equipment to be maintained by the ore dock employees, therefore its maintenance belongs to the B&B mechanics. The record in this matter is clear, however, that removal or salvaging of taconite pellets, at least in routine operations, has not been interpreted to constitute maintenance work within the meaning of Supplement No. 9. Moreover, by express provision, Supplement No. 9 does not grant exclusive rights to work.

The foundation underlying the Organization's position is the purpose of the work. Distilled to its essence, the Organization says that when the purpose of the work changed from normal operations to preparation for painting, only B&B mechanics could do the work. Taken to its logical extremes, this would mean that B&B mechanics had exclusive jurisdiction to all work once the objective became to ready the stacker for painting.

This Board has several problems with the Organization's position. First, there is no evidence in the record that the parties, by Agreement provision or by practice, intended that the precise same work would be violative or non-violative of the Agreement based on a fine line distinction hinging on the purpose of the work. Second, there is no evidence that the ore dock employees did not actually salvage the taconite pellets removed. The General Chairman agrees that salvaging of pellets does not violate the Agreement. Finally, the Organization's position contains an inconsistency. In the Organization's all-encompassing view of preparation work, the removal of obsolete conduit and wire has to be seen, based on this record, as no less in preparation for painting than was the removal of taconite pellets. Yet, the Organization does not claim for the work done by the electricians.

In light of these concerns, the prior precedent applicable to cited Rules, and the evidence of normal practice, we do not find that the Organization has satisfied its burden to prove that its members had exclusive rights to perform the disputed work. Accordingly, we cannot conclude that Carrier has violated the Agreement.

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 28th day of February 1992.