

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29652
Docket No. MW-29208
93-3-90-3-81

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES OF DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Canadian Pacific Limited

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Electrical Department employe J. B. Brewer instead of Grade 1 Maintainer R. Rand to perform maintenance work on roadway machines in the shop at Brownville Jct., Maine [System File 14.006 (795)/P-1306].

(2) As a consequence of the aforesaid violation, Mr. R. Rand shall be compensated for all straight time and overtime wage loss suffered beginning sixty (60) days retroactive from March 12, 1987."

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 re 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.

As third party in interest the International Brotherhood of Electrical Workers was advised of the pendency of this dispute and filed a Submission with the Board.

The Organization maintains that in January 7, 1987, Carrier assigned an Electrical Department employe, to perform work on roadway machines in Carrier's shop in Brownville Junction, Maine. The Organization alleges that this maintenance work has customarily, traditionally, and historically been performed by

members of the Maintenance of Way Department. It contends that Claimant, a furloughed Maintainer Grade 1, was entitled to the position by virtue of his seniority and was qualified and available to perform the work.

The Organization cites Rule 45.2, a Classification of Work Rule, which lists the title of Roadway Equipment Mechanic 9th equivalent of the Canadian title of Maintainer Grade 1), in support of its argument. It contends that it was the parties' intent that certain work would accrue to employees holding seniority in specified classifications. The Organization believes that Carrier has failed to prove a practice permitting Electrical Department employees to do the work.

Carrier maintains that all machine repair work in Maine and Vermont has consistently and historically been assigned to Electricians and that for some forty years, roadway machine repairs have been carried out by Road Electricians and Electricians' Helpers at Brownville Junction without objection. Claimant, who qualified as an Electrician in 1980, was promoted to the permanent full time Electrician's position in Brownville Junction that year. According to Carrier, Claimant performs no work on mechanical equipment. He works on roadway machines and electrical equipment in buildings and comes under the direction of the Division Engineer.

Carrier notes that prior to his layoff, Claimant, who initially worked as an Electrician Helper, assisted with electrical maintenance on Carrier's property and repaired disabled motorized railroad track equipment. After his layoff, Claimant was recalled when needed to work various positions. At some point, Claimant applied for and was awarded the position of Maintainer, Grade 1. It appears from the record that at that juncture, a dispute arose over the work in question here.

Rule 45.2 reads as follows:

"In specifying the classification in Rule 45.1 (e), the parties have agreed that the following positions are not subject to entry rates:

- Apprentices
- B&B Skilled Tradesmen
- Assistant Foremen
- Roadway Equipment and Machine Operators
who have established seniority as such
(but not Helpers and Firemen)
- Camp Car cooks (but not Helpers)
- Pumping Equipment Operators (but

Bridge Operators (but not Helpers)
Welders (but not Helpers)
Maintenance of Way and Scale Inspectors
Water Service Mechanics
Roadway Equipment Mechanics"

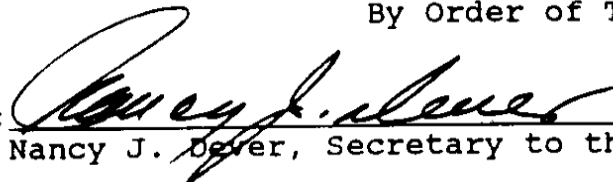
There is no dispute that Roadway Equipment Mechanics are listed in this Rule, but this Board has held on numerous occasions in the past that a Classification of Work Rule does not in itself necessarily grant work to a named classification exclusively. (See, for example, Third Division Awards 19921, 27806.) Absent a finding that the work at issue accrues only to a specific classification, it is necessary to consider whether it has been performed solely by one group by custom, history, or practice. In this instance, the Organization has failed to present sufficient proof that it has. Rather, there appears to be ample evidence that for some thirty-five or forty years, the work in question here has been done by Electrical Department employees.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993.