

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41032
Docket No. MW-41346
11-3-NRAB-00003-100126**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Chicago &
(North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Operating Department employees to perform Maintenance of Way and Structures Department work (clean snow from switches and crossing flangeways) in the Marshalltown Yard, Oskaloosa Yard and Eddyville on November 30, December 1, 3, 9, 10, 16, 17, 18, 19, 20, 21, 22, 23 and 28, 2008, instead of T-4 Seniority District employees R. Weatherman, G. Thomas, R. Crandon and S. Cizek (System File R-0901C-302/1514345 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Weatherman, G. Thomas, R. Crandon and S. Cizek shall now ‘. . . each be compensated sixty (60) hours of straight time and twenty-four (24) hours of overtime for work that the Operating Craft employees performed maintenance work, at the applicable straight time and overtime rates.’”**

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 employee 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 were given due notice of hearing thereon.

On the dates and at the locations set forth in the claim, the Carrier utilized train crews to clean snow from switches and crossing flanges. This type of work has been performed by Maintenance of Way employees in the past.

The Scope Rule is general. Nothing in the Scope Rule exclusively reserves the cleaning of snow to Maintenance of Way employees.

In cases such as this where there is a general scope rule, the burden is on the Organization to prove that the work has historically been performed by scope-covered employees on a system-wide basis. See Third Division Award 26033:

“This Board has carefully reviewed the evidence as presented on the property and finds nothing in the Agreement Rules cited of clear and unambiguous language assigning such work as herein disputed exclusively to the Maintenance of Way ranks. Nor does this Board find sufficient evidence of probative value to establish that such disputed work has historically been performed exclusively by members of the Maintenance of Way by custom, practice and tradition on a system-wide basis. . . .”

See also, Third Division Award 36762 involving snow removal work:

“This is a dispute between employee groups concerning the assignment of snow removal work. Absent a clear reservation by Rule of that work only to the Claimant’s class of employees, the Organization is required to demonstrate that such snow removal work has been historically and exclusively performed by that class of employees on a system-wide basis. See Public Law Board No. 3460, Award 65:

‘The Board is constrained to note that the Organization is taking the position that not only is snow removal work reserved exclusively for employees on the Maintenance of Way category but also within that group, exclusively reserved to Track subdepartment only by historical systemwide exclusivity. Such evidence, however, is not in the record. . . .’

Here, there is no Rule that clearly reserves snow removal work only to the Claimant’s class of employees. Further, there is no evidence that the Claimant’s class of employees has historically and exclusively performed this work on a systemwide basis. . . .”

Putting aside the fact that the Carrier offered the statement of Manager C. Crawford (which the Organization contends it did not receive on the property) that train crews clean snow from switches and flanges and that the Carrier provides switch brooms at each switch so the train crews can perform that function, the statement offered by the Organization from Section Foreman R. J. Weatherman that Maintenance of Way Employees clean snow does not demonstrate that the specific work of cleaning snow from switches and flanges has been performed exclusively by Maintenance of Way employees on a system-wide basis.

This claim lacks merit and shall be denied.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 23rd day of August 2011.