

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44352
Docket No. MW-45705
21-3-NRAB-00003-200005

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference

PARTIES TO DISPUTE: (

(National Railroad Passenger Corporation (AMTRAK) –
(Northeast Corridor

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Supervisor D. Marshall to perform Maintenance of Way Department right of way maintenance work (mowing grass) at the Niles Depot in Niles, Michigan on May 7, 2018 instead of offering and assigning Michigan Line ‘B’ Operator K. Daniels thereto (Carrier’s File BMW-626 NRP).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. Daniels shall be compensated four and one-half (4.5) hours at his applicable overtime rate of pay.”

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.

The Claimant has established and maintains seniority in the Carrier's Maintenance of Way Department. During the time period involved, the Claimant held the position of Michigan Line "B" Operator assigned to Niles, Michigan.

On May 7, 2018, ARASA-represented Supervisor Marshall performed four and one-half hours of work mowing grass at the Niles, Michigan Depot. The Organization contends that this work has been ordinarily performed by Maintenance of Way forces on Carrier owned equipment since 2016.

By letter dated June 5, 2018, the Organization filed a claim on behalf of the Claimant asserting that the Agreement was violated when the Carrier failed to properly assign him to perform the subject work. The Carrier denied the claim by letter dated June 26, 2018. The parties were unable to resolve this matter on property and it is properly before this Board for final adjudication.

The Organization contends that the Carrier violated the parties' Agreement when it assigned ARASA-represented Supervisor Marshall to perform grass mowing duties customarily performed by Maintenance of Way employees at the Niles, Michigan Depot. The Organization contends that the Claimant maintains seniority under the Maintenance of Way Agreement and was available and willing to perform the work had the Carrier allowed him to do so, while Supervisor Marshall is not covered under the Agreement.

The Carrier contends that the Organization has failed to prove that it violated any part of the Agreement when an ARASA-represented supervisor mowed the lawn at the Niles Depot during his regular shift. Further, the Carrier contends that the Claimant had no claim to the work at issue, which had historically been contracted out and only recently assigned to Carrier employees.

The Carrier contends that the work involved was not Scope-covered, inconsequential, and *de minimus*. The Carrier contends that the supervisor's intended to determine how long mowing the grass would take when he assigned it to BMW-represented employees in the future. Furthermore, the work was performed during Supervisor Marshall's regular duties, and no overtime work was performed.

The claimed work has only recently been performed by the Carrier's forces; there is no dispute that it had historically been performed by outside forces and only

in the last few years have BMW-represented employees performed the work in this location. In addition, the supervisor completed the mowing in order to determine how much time to allot to the task when performed by Maintenance of Way employees. The mowing was performed as part of his supervisory duties.

Thus, the Organization has not demonstrated that the work in question is “work ordinarily performed by the Brotherhood of Maintenance of Way Employees as it has been performed traditionally in the past in that territory.” Finally, as no overtime work was performed, the Claimant had no right to compensation.

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 6th day of January 2021.