

PUBLIC LAW BOARD NUMBER 1837

Case Number 47
(MW-BRS-76-19)

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

1. The Carrier violated the provisions of the Effective Working Agreement dated April 1, 1951, of the Wheeling and Lake Erie District, and subsequent agreements when on May 21, 24, 28, June 6, 7, 11, 14, 18, 21, 25, 28, July 2, 6, 9, and 12, 1976, and subsequent thereto, the Carrier used two (2) car department employees to maintain, clean, charge chemical tank, and pump sludge at the Duck Creek environmental control facility located at Street Yards, Toledo, Ohio, for two (2) hours each day, instead of assigning Bridge and Building employees P. J. Evans and R. J. Kubiak. (MW-BRS-76-19)

2. The Claimants, P. J. Evans and R. J. Kubiak, be compensated for an equal proportionate share for all hours work by the carmen until said work is again performed by Bridge and Building employees.

FINDINGS: This Board, upon the whole record and all evidence, finds that:

The carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

OPINION:

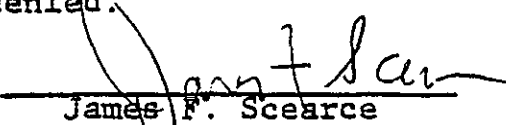
The Organization demonstrates, without refutation, that the Claimants have for several years serviced the Carrier's "Water Pollution Facility" in Toledo, Ohio. Such work entailed the charging and cleaning of vats which remove oil and other foreign matter from waste water before its release into the sewer system. The record indicates that the facility was built by B&B forces represented by the Organization and, as heretofore mentioned, its functions were monitored and serviced by the Claimants for several years up to about May 21, 1976. On that date, the Carrier commenced the use of employees of another classification (Carmen) and represented by another Organization (BRC) to perform such work. The instant Claim resulted. The Carrier asserts that, although the work of this facility may have previously been performed by the Claimant's and/or others from the B&B forces, the Organization cannot demonstrate such work was exclusively assigned to that craft; further, the Carrier contends the Organization cannot show exclusivity for such work system-wide. Per the Carrier, other forces have been used to perform such duties at other locations. Finally, the Carrier raises the matter of unjust enrichment for the Claimants, pointing out that both were fully employed; it also asserts that the estimated time for such work

(as stated in the claim) was excessive.


While it is noted that the Carrier apparently used B&B forces at this location to maintain the Water Pollution Plant for several years and an argument might reasonably be made that such work is akin to other functions performed by this craft, there is no indication that maintenance of operation of this facility is covered by the Scope Rule of this craft. The requirement for the Water Pollution Plant was imposed upon the Carrier by external forces and thus would not be a function performed in a normal course of business. Unless the Carrier and the Organization have negotiated inclusion of such work under the aegis of a collective bargaining agreement or the Organization can meet the rigorous test of a past practice, a claim of rights as herein stated by the Organization cannot be upheld. The proof of past practice depends upon a broader showing of exclusivity than in this case. While we find considerable logic to the Organization's arguments, we find insufficient cause to affirm this claim.

AWARD:

Claim is denied.


James F. Searce
Neutral Member


E. N. Jacobs, Jr.
Carrier Member


William E. LaRue
Employee Member

Dated

March 24, 1982 at Philadelphia, Pa.