

PUBLIC LAW BOARD NO. 1844

AWARD NO. 17

CASE NO. 9

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned snow removal work on the "Winner Line" to other than Maintenance of Way Forces. (System File 81-16-7).
- (2) Machine Operator Wayne Schultz be allowed one hundred twenty-four (124) hours' pay at his straight time rate because of the violation referred to within Part (1) of this Claim."

OPINION OF BOARD:

This claim involves alleged violation of Rule 1, the Scope Rule, for Carrier's failure to notify the General Chairman of a contracting transaction and its contracting out of work covered by the Scope Rule to wit the removal of snow from the tracks on a little used branch line in Nebraska. Specifically, Carrier entered into a contract with a local construction company to use a bulldozer to push snow off the tracks on its Winner Line during the period December 8 through 15, 1975. The unrefuted record shows that the outside contractor spent approximately one hundred twenty-four man hours in the work of snow removal with his bulldozer.

The basic question in this case is whether the operation of a bulldozer to push snow off of a track comes within the coverage of Rule 1 specifically within the language reading as follows: "All work in connection with the maintenance of tracks." Carrier on the property argued that the work was not covered by Rule 1 because it has not been performed exclusively by M of W forces as a matter of custom, practice, and tradition. For reasons developed more fully in our Award No. 16 we find that evidence of customary work performance is not relevant if the disputed work is covered by the express language of the first paragraph of Section (b). Where, as here, the parties have agreed upon specific and unambiguous contract language we may not modify it but must take it as we find it. In our considered judgment the work of snow removal with a bulldozer clearly falls within the coverage of Paragraph 1 of Section (b). As such, Carrier may have rightfully contracted that work under one of the exceptions contained in Paragraph 2 of Section (b) but it was not thereby relieved of its responsibilities for notice and consultation under Paragraph 3 of that Section. The unrefuted record shows that Carrier officials failed to give the requisite notice to the General Chairman. We are not persuaded by Carrier assertions of emergency. In the circumstances the record proves a plain violation of Rule 1 by failure to give the required notice. For reasons stated in detail in earlier Awards, including Awards No. 13 and 16 of the Board, evidence of equipment availability therefore is irrelevant. The record shows that Claimant held seniority as a Machine Operator and was qualified to operate the bulldozer if given the opportunity. Carrier violated the notice and consultation requirements of Rule 1, there is evidence of lost work opportunity, and accordingly we shall sustain the claim for compensatory damages.

FINDINGS:

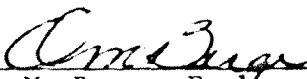
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

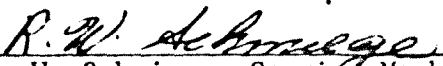
1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was violated.

AWARD

The claim is sustained.


Dana E. Eischen, Chairman


O. M. Berge, Employee Member


R. W. Schmiede, Carrier Member

Dated: Aug. 18, 1977