

PUBLIC LAW BOARD NO. 249

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

NORFOLK AND WESTERN RAILWAY CO.

STATEMENT OF CLAIM:

1. The Carrier violated the effective working Agreement when they failed to call the B&B Gang No. 6 of Adena, Ohio, to assist section men to clean cars at Franklin Mine, New Athens, Ohio, on Friday, February 24, 1967, but used Franklin Coal Miners to perform this work.

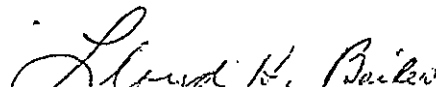
2. The B&B Gang No. 6 of Adena, Ohio, namely, Foreman J. P. Piccin, Leading Mechanic, Joseph Slaga, First Class Carpenters, Peter Cieresewski, Louis Katona, and Wayne Hoskinson, Second Class Carpenters, Albert Fiutem, Stanley Burinski, Joe Ragits, and John Panepuccu and Carpenter Helpers, Robert Sliva and Willard Nichols, be reimbursed for earnings they would have received had they been called to perform car cleaning work on Friday, February 24, 1967, from 4:30 PM to 11:00 PM at time and one half, according to their respective rates of pay.


OPINION OF BOARD:

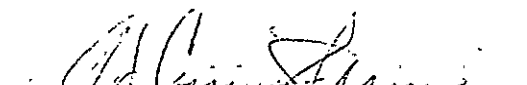
The contention in this claim is that Carrier violated the Agreement scope rule, as established by past practice, by failing to call the subject B&B gang to assist section men in cleaning cars at Franklin Mine (New Athens, Ohio) on the claim date and allowing the mine's employees to provide this assistance. While B&B employees have performed this work in the past, the record does not show a consistent, long-established practice whereby B&B employees have performed such work to the exclusion of mine employees. The fact that certain B&B personnel were once disciplined for refusal to perform the same type of work at a nearby industry location does not prove a contract right to the work. It merely proves that insubordination is an offense which makes an employee liable to discipline. It is not uncommon for employees to be assigned duties not exclusively theirs. The imposition of discipline for refusal to perform such an assignment does not create a contractual work jurisdiction which the employees did not previously enjoy.

AWARD:

Claim denied.


Lloyd H. Bailer, Chairman


E. G. Psolla, Carrier Member


A. J. Cunningham, Employee Member

Dated: July 13, 1971