

PUBLIC LAW BOARD NO. 3460

Award No. 65  
Case No. 65

PARTIES      Brotherhood of Maintenance of Way Employees  
                 and  
TO  
DISPUTE      Burlington Northern Railroad Company

STATEMENT "1. The Agreement was violated when the Carrier used  
OF CLAIM:      Group 2 Machine Operator T. Tate to perform  
                 Sectionman's work on January 25, 26, 27, 228, 29,  
                 February 1 and 2 and March 1, 2, 3 and 4, 1982.

2. Because of the aforesaid violation, furloughed  
Sectionman M. L. Knox shall be allowed eighty-  
eight (88) hours of pay at his straight time rate.  
In addition, he shall be allowed pay at his time  
and one-half rate for an equal number of hours in  
which Machine Operator Tate performed Sectionman  
work on an overtime basis on the claimed dates."

FINDINGS

Upon the whole record, after hearing, the Board finds that the  
parties herein are Carrier and Employees within the meaning of  
the Railway Labor Act, as amended, and that this Board is duly  
constituted under Public Law 89-456 and has jurisdiction of the  
parties and the subject matter.

Claimant Knox was the Sectionman in the Track subdepartment with  
seniority on May 3, 1955. At the time of the incidents involved  
in this dispute, he was furloughed as a result of force  
reductions. Mr. Tate was a Group 2 Machine Operator within the  
Roadway Equipment subdepartment on the dates in question. The  
record indicates that on the dates at issue herein, the machine

-2-

which Mr. Tate had been operating was inoperable due to mechanical problems. On those dates Carrier assigned Mr. Tate to help and assist Section forces perform work in shoveling snow from switches within the seniority district which Claimant was from. The dispute herein was triggered by this action since the Organization insisted that Claimant was the senior furloughed sectionman and should have been recalled to clean the snow from the switches instead of it being assigned to Mr. Tate.

Petitioner argues that Sectionmen are assigned to the activity of removing snow from the right of way. This is clearly Maintenance of Roadway and Track work and the assignment of a Machine Operator to perform Sectionman's work under such circumstances was a violation of the Agreement. Thus it is the Organization's position that the Carrier violated the Agreement when it permitted other than Track subdepartment employees to perform the work of snow removal, which is alleged was to be performed by Track subdepartment employees.

Carrier notes that Mr. Tate was paid the higher rate of pay of his group performing the work of snow removal together with the Sectionmen's group. Further, the work of removing snow was a temporary expedient while Mr. Tate's machine was being repaired and was not a permanent assignment, or even an assignment of 30

days duration. Carrier further maintains that the work of cleaning snow from switches is not generally recognized as exclusive work of any particular class or craft of employees.


The Board is constrained to note that the Organization is taking the position that not only is snow removal work reserved exclusively for employees of 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. Petitioner has failed to indicate that the work of snow removal belongs exclusively to any class of employees, much less the Track subdepartment group. Further, there is no rule support for the position that the work in question belongs to the Claimant herein. In addition, the Board must observe that there is nothing in Rule 9 which requires Carrier to recall an employee for temporary activity such as that involved in this dispute. <sup>Rule</sup> ~~Section~~ 9 provides that a furloughed employee will be called back to service in seniority order when new positions of more than 30 days duration are established or when vacancies of more than 30 calendar days duration occur. Neither such circumstance obtained in this dispute. The Board must conclude that the Claimant herein had no recall rights to clean snow for the several days involved, and even if this work was exclusively Track subdepartment work, which it was not, there

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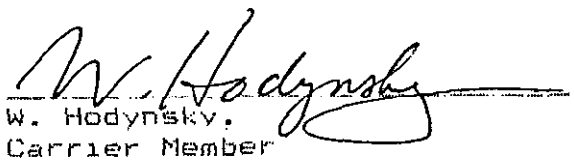
is no merit to the Claim and it must be denied.

AWARD

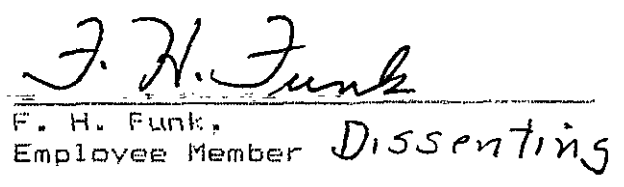
Claim denied.



I. M. Lieberman, Neutral-Chairman



W. Hodynsky,  
Carrier Member



F. H. Funk,  
Employee Member *Dissenting*

St. Paul, Minnesota

~~June~~  
~~May~~ 24, 1988