

PUBLIC LAW BOARD NO. 4104

Case No. 13

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
vs.
Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assigned or otherwise permitted Utility Clerks to clean snow from switches in the Rip Yard, Yard D and Seminary Tower area in the Galesburg Terminal, Galesburg, Illinois on December 17, 1983. (System File 3 Gr MWA 84-2-22B)
2. Section Foreman L.W. Pendergrass and Sectionmen S. Arguello, M.A. Valdez and B.L. McKee shall each be allowed eight (8) hours of pay at their respective overtime rate of pay because of the violation referred to in part (1) hereof."

OPINION OF BOARD: The relevant facts of this claim are not in dispute. On December 17, 1983, Carrier employed Utility Clerks, who are not members of the Organization, to clean snow from switches in its Galesburg, Illinois terminal. As a result, the Organization filed this claim. Carrier timely rejected it. Thereafter, the Organization appealed the matter to this Board for adjudication.

The Organization contends that Rule 55 R and Q require that the disputed work be performed exclusively by members of its craft. In addition, it submits that its forces have customarily engaged in this work. Therefore, it argues, that the Agreement and the practice of the parties compels a sustaining award.

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Carrier asserts that nothing in the Agreement specifically reserves the disputed work to the Organization's members. Given this factor, Carrier maintains that the Organization must demonstrate that the work has been exclusively performed by its members. This, Carrier insists, the Organization has failed to do. Thus, Carrier asks that the claim be rejected on this basis as well.

After reviewing the record, the Board is convinced that the claim must be denied. This is so for a number of reasons.

First, no rule in the Agreement specifically reserves the disputed work to the Organization. Rule I, the Scope Rule, does not deal specifically with this issue. Furthermore, Rule 55, cited by the Organization, is a Classification of Work rule. It is not a Scope Rule. It is well established that "Classification Rules do not reserve work exclusively to employees of a given class." (Third Division, Award No. 19922)

Given these factors, there is no rule in the Agreement which covers the work in question. As such, the Organization bears the burden of establishing that its forces have traditionally removed snow from switches. That burden has not been met here. Nothing in the record establishes this contention. In fact, the record contains statements that individuals outside the Track Department have performed this work in the past (See letter dated March 25, 1980 from Assistant Superintendent J.A. Ketcham) Thus, there is no showing that Organization members have customarily cleaned snow from switches in the past. Accordingly, and for the foregoing reasons, the claim must be denied.

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FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

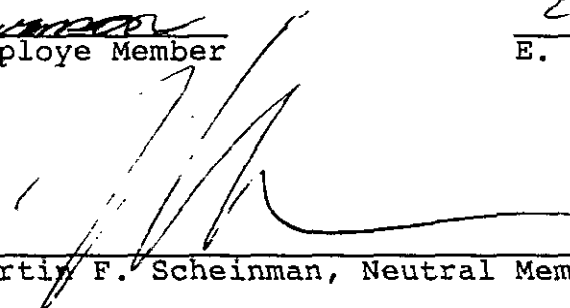
That the Agreement was not violated.

AWARD:

Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

Feb. 7, 1989