

PUBLIC LAW BOARD NO. 5554

AWARD NO. 4
CASE NO. 1

PARTIES TO
THE DISPUTE: Transportation - Communications
 International Union
 vs.
 Duluth, Missabe & Iron Range Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied.

DATE: April 21, 1995

STATEMENT OF CLAIM:

1. Carrier violated, and continues to violate, the effective Agreement when it assigns ore dock work to employees not covered by said Agreement which work is reserved by Agreement to employees covered thereby:
2. Carrier shall now cease assigning the disputed work to outsiders and shall assign it to employees covered by the Agreement in which it is vested.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

This dispute challenges the performance of certain conveyor belt "training" work by Carrier's Bridge and Building (B&B) employees who are represented by the Brotherhood of Maintenance of Way Employees (BMWE). Belt training refers to the work associated with periodically adjusting the conveyor belts to keep them properly aligned on their rollers and running true.

Because of the nature of the dispute, the Board invited the BMWE to attend the Board's hearing and to file a submission to state its position. The BMWE availed itself of both opportunities.

Since the interested parties are intimately aware of the facts involved, this Award will provide only an abbreviated summary of the background circumstances.

The Organization represents employees who operate the conveyor

equipment to load taconite pellets onto ore boats at Carrier's facilities in Duluth and Two Harbors, Minnesota. In addition to their operation, the conveyor systems have required certain maintenance.

On October 19, 1967, the Organization, Carrier and the BMWWE signed a three-way agreement to allocate all maintenance work between the two bargaining units. In this agreement, "Ore Docks" referred to the employees represented by the Organization and "B&B" referred to the employees represented by the BMWWE. Pertinent portions of the 1967 agreement read as follows:

It is agreed that maintenance work on the Lakehead Storage Facility [Duluth] will be allocated to Ore Dock and Maintenance of Way Employees as follows:

* * *

3. Stacker

* * *

- d. Ore Docks for belt training and alignment, except for a short period after installation of new belt.

* * *

5. Conveyor Belts

- a. Same as shown on Stacker.

* * *

The excerpted provisions above describe the work in dispute. Indeed, the Organization's submission, at page 9, states, "This work was clearly described in the Agreement of October 19, 1967." All in attendance at the Board's hearing confirmed that the foregoing language described the work in dispute.

The Organization has a "positions or work" scope rule which prevents the removal of covered work except by written agreement.

On October 20, 1977, the same three parties made another agreement to again allocate maintenance work between the Ore Docks and B&B employees. This was in response to technological changes to the conveyor equipment as well as the startup of similar operations at Two Harbors. Pertinent portions of the 1977 Agreement read as follows:

It is hereby agreed that, effective November 1, 1977, all previous agreements governing the distribution of maintenance work between Ore Dock employees and B&B Department employees at the Lakehead Storage Facility

will be cancelled.

Commencing November 1, 1977, maintenance work to be performed by ore dock employees or B&B Department employees at the Duluth Lakehead, Steelton, or Two Harbors ore storage facilities will be allocated as follows:

Ore Dock Employees

* * *

4. Greasing of conveyor systems, except when performed in connection with installation of new idlers or equipment.

Bridge and Building Department Employees

1. Maintenance and repair of conveyor systems and equipment not specifically listed for ore dock employees above.

* * *

Also on October 20, 1977, the Carrier's then Director of Labor Relations sent a letter to the Organization's General Chairman, which read as follows:

This will confirm our understanding that the agreement signed today relative to the allocation of maintenance work between ore dock employees and B&B department employees at the Duluth Lakehead, Steelton and Two Harbors ore storage facilities will not affect the allocation of existing operational functions such as:

1. Pumping water from storage area for the purpose of reclaiming pellets.
2. Belt training and alignment during pellet handling, and
3. Thawing of pocket gates for the purpose of operation.

which will continue to be performed by ore dock employees.

The record developed by the Carrier and the Organization on the property does not identify the precise date when B&B employees began performing the belt training work in dispute. A June 26, 1978 job description for the Ore Docks classification of Conveyor Attendant does not explicitly list conveyor belt training among the duties and responsibilities enumerated. Examination of the record

reveals no other source of evidence showing performance of the disputed work by the Ore Dock employees after November 1, 1977. The submission of the BMW, however, included a large number of employee statements showing past performance of the work by its members since November 1, 1977.

The Organization contends the disputed work is really operational work, which is reserved to the employees it represents. It strongly emphasizes the text of the letter from Carrier's Director of Labor Relations in 1977 for support of its position. It also says that it was unaware of the past performance of the work by the B&B employees until recently. It notes that a 1981 claim challenging belt training was not pursued in reliance upon Carrier's assurances that tools were required, thus placing it within the domain of the B&B employees.

Carrier's position is that the work has been properly assigned to B&B employees since the effective date of the 1977 Agreement.

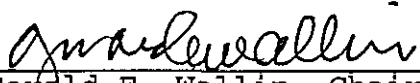
After careful review of the record, the Board finds that the weight of the evidence opposes the Claim. The central issue is whether the disputed work is "operational" work or "maintenance" work. The determining factor is what the various parties, themselves, defined it to be. The 1967 three-way agreement clearly lists the work among the various maintenance tasks to be allocated. In 1967, such belt training was allocated to the Ore Docks employees, who presumably performed it for the next ten years. But the performance of such maintenance work by operating personnel does not change the character of the work. The same is true of the 1977 letter written by the Carrier's Director of Labor Relations. Being only a two-party understanding, it could not operate to alter the character of the work under either the 1967 or the successor 1977 three-way agreements. Absent a three-way agreement of the parties to the contrary, and there is no evidence of such in this record, the work remained maintenance work. When the parties reached a new three-way agreement in 1977, the former allocation of work was extinguished. In that agreement, the Ore Docks employees retained only the greasing of conveyor systems. All other maintenance work, not specifically listed for Ore Docks employees

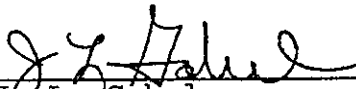
reverted to the B&B employees.


The 1977 three-way agreement stands as the necessary written agreement required to remove work covered by the Organization's "positions or work" scope rule. In view of these circumstances, the assignment of the disputed work to B&B employees on and after November 1, 1977 cannot be found to violate the effective Agreement. Carrier, therefore, properly denied the Claim.

AWARD

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


J. L. Gobel,
Organization Member


R. E. Adams,
Carrier Member

Dated this 21st day of April, 1995 in St. Paul, Minnesota.