

PUBLIC LAW BOARD NO. 1844

AWARD NO. 65

CASE NO. 78

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 Agreement was violated when Car Department employees at East Minneapolis spread rock on Rip Tracks with Bob-cat Front End Loader March 28, April 12 and 21, 1978. (System File 81-19-164)
- (2) The Agreement was further violated when the Carrier did not give the General Chairman prior written notification of its plan to assign said work to other than Maintenance of Way forces.
- (3) Because of this violation, Machine Operator Harold Jay be allowed sixteen (16) hours pay at his straight time rate of pay. (March 28th 6 hours, April 12 2 hours and April 21st 8 hours, Total 16 hours)."

OPINION OF BOARD:

The work in dispute herein is the unloading and spreading of gravel known as "screening" in the repair track area at Carrier's East Minneapolis shop. Car Department employees were assigned to perform that work using, among other tools and equipment, a Bob-cat Front End Loader. The Organization herein maintains that this constituted a violation of the Track Department employee's rights under Rules 1 and 3 of the Agreement between Carrier and the BMWE. Claimant, a qualified Machine Operator, seeks payment at the

straight time rate for the sixteen hours during which Car Department employees performed the disputed work.

The fact that a front end loader was used does not per se make this Track Department work. Nor does the fact that gravel or rock was the material involved. Rather, the central question is whether the work of spreading the gravel may fairly be categorized as "work in connection with the maintenance of tracks". The answer to that question in this particular case lies in a factual determination concerning the purpose for which the screening or gravel was spread in the repair track area. So far as the record shows, the screening was spread in the repair shop to provide level walking and driving surfaces and to facilitate drainage in the area. There is no showing on the record whether or to what extent the gravel was actually placed in and around tracks. We are not persuaded on this record that the work in dispute falls within the express definition of Rule 1(b). Accordingly, the claim shall be denied.

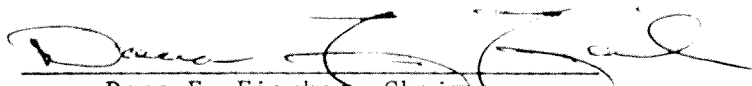
FINDINGS:

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

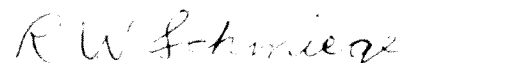
1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Date: March 25, 1980