

PUBLIC LAW BOARD NO. 1844

AWARD NO. 53

CASE NO. 69

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATE OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it used Robert Fogelberg, Foreman of Smoothing Gang No. 1, to inspect track in the absence of Track Supervisor Norman Seever on Saturday, October 22, 1977; Sunday, October 23, 1977; Monday, October 24, 1977 (Veterans' Day); Saturday, October 29, 1977; and Sunday, October 30, 1977 (Carrier File No. 81-19-160).
- (2) Track Foreman D. Duncan and L. Johnson and Trackman R. Selvig and A. Melton each be allowed pay at their respective rates of pay for an equal proportionate share of the total number of overtime hours because of the violation referred to in Part (1) of this Statement of Claim."

OPINION OF BOARD:

Claimants are foremen and sectionmen of section crews on Carrier's New Richmond Sub-Division. They are assigned regularly to work Monday through Friday. A Track Supervisor, Mr. Norman Seever, also is assigned to the New Richmond Sub-Division, with regular workweek Friday through Tuesday. The main function of the Track Supervisor is track inspection work. Apparently, a relief track inspector did the track inspection on Thursday and track foremen, like two of the claimants, did the inspection work on Wednesday, Wednesdays and Thursdays being the regular rest days of the Track Supervisor. For the period Wednesday, October 18, 1977 to Tuesday, October 31, 1977, however, the regularly assigned Track Supervisor

was absent due to illness. It is not contested that during the Track Supervisor's period of absence Claimants were used to perform his track inspection during the week. Claimants assert that they performed such work Monday through Friday but Carrier contends that the Relief Track Inspector did the work on Thursday. In any event, it is established that Claimants were not used on their Saturday or Sunday rest days nor on Monday, October 24, 1977, which was a holiday. Instead, for those days Carrier called and used Mr. Fogelberg, who at that time was working as Foreman of the Smoothing Gang, which at that time happened to be working on the New Richmond Sub-Division.

The Organization maintains that failure to call Claimants and instead calling Foreman Fogelberg was a violation of the clear contract language of Rule 23(1); which incorporates into the Agreement Paragraph (i) of Section 3 of Article II of the Forty-Hour Week Agreement. Carrier insists, however, that it was acting properly and in accord with the seniority rules in calling Foreman Fogelberg instead of Claimants, since he held seniority as a Track Supervisor and they did not.

The crux of this case is whether the Claimants are to be considered the "regular employee" within the meaning of that phrase in Rule 23(1). Upon consideration of all of the evidence we believe that they must be so considered in the circumstances of this case. During Track Supervisor Seever's absence, Carrier used Claimants to stand in for him during their regular workweek. They performed his work regularly during his absence and as such they stood in his place for purposes of applying Rule 23(1). Fogelberg had no superior right under the general seniority rules to prevail over their special rights under Rule 23(1). There is no assertion of available extra or unassigned employees with less than 40 hours work that week.

Carrier should have assigned Claimants to the work in question. See Awards 3-8708, 3-16095, 3-20187, et al. The claim shall be sustained.

FINDINGS:

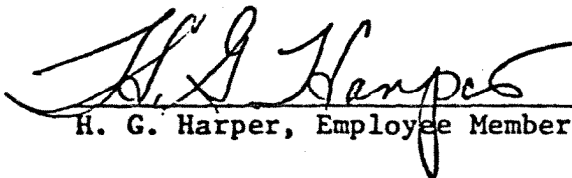
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

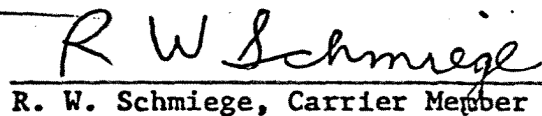
1. that the Carrier and Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was violated.

AWARD

Claim sustained.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: May 17, 1979