

PUBLIC LAW BOARD NO. 1844

AWARD NO. 64

CASE NO. 79

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 Carrier violated the Agreement when, on March 3, 14 and 15, 1978, it assigned the work of removing snow and ice from the Rip Tracks at East Minneapolis to Car Department forces. (System File 81-19-165)
- (2) Machine Operator Harold Jay be allowed twenty-four (24) hours' pay at the straight time rate because of the violation referred to within Part one (1) of this claim."

OPINION OF BOARD:

On claim dates, Carrier assigned employees of the Car Department to remove snow from the Rip Track area at East Minneapolis. The Car Department employees used a Bobcat front-end loader to perform this work on the tracks. The unrefuted record indicates that at all times covered by the claim, Claimant Harold Jay was assigned by Carrier to perform other duties in East Minneapolis.

In all of the previous Scope Rule cases heard by this Board, the dispute arose out of Carrier utilizing outside contractor's forces to perform certain work. Most of those cases turned upon failure to notify and hold requisite conferences with the General Chairman of the BMW. The present case concerns Carrier's use of its own forces to do work allegedly reserved to BMW by Rule 1. Thus, the collateral notice and consultation provisions of Rule 1(b),

Paragraphs 2 and 3, are not directly applicable herein. Cf. Awards No. 13 and 15 of this Board. The only question raised on the present record is whether the work at issue is expressly reserved to employees of the Maintenance of Way and Structures Department by Rule 1(b), Paragraph 1.

In our prior Award No. 16 (Case No. 8), we had occasion to analyze in detail the meaning and application of Rule 1(b). Coincidentally, that case also involved the removal of snow. See also, Award No. 17 (Case No. 9). As we indicated therein, snow removal per se is not necessarily the determining factor nor is the fact that a machine is used. Rather, the operative question in the present case is whether the removal of snow from repair tracks is work fairly falling within the description of work reserved to employees of the Maintenance of Way and Structures Department by the words of the Rule 1(b), to wit: "...all work in connection with the...maintenance ...of tracks, structures and other facilities, etc.". We are persuaded that the removal of snow from tracks comes within the express words of reservation "all work in connection with maintenance of tracks". The question whether a Rip Track is used in the operation of the Company in the performance of common Carrier service on the operating property was not adequately joined herein and ~~was~~ not be determined on this record.

On the basis of the record before us, we hold that the work of snow removal on the repair track was improperly assigned by Carrier to Car Department employees who are not covered by Rule 1 of the BMW Agreement. There is no showing that this snow removal work was of an emergency nature. Carrier's assignment of Claimant to perform other duties at the time does not defeat his claim of damages by that violation. While it is true that he could not be in two places at once, Carrier had control of his "availability". The Carrier chose to assign him to do other work at times when Car Department

employees were performing work reserved under the Scope Rule to employees represented by BMW. We are persuaded that Claimant experienced a loss of work opportunity and earnings as a result of that violation and we shall sustain the claim for monetary damages. See Awards No. 16 and 17 of this Board. See also Awards 3-14004; 3-19924; 3-20338; 3-20412; 3-21678.

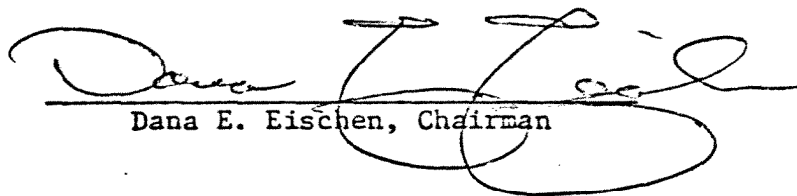
FINDINGS:

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

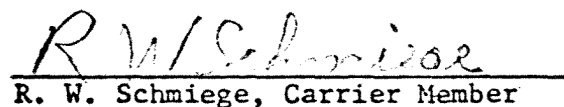
1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
 2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was violated.

AWARD

Claim sustained. Carrier shall comply with this Award within thirty (30) days of issuance.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Date: March 25, 1980

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