

PUBLIC LAW BOARD NO. 249

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

NORFOLK AND WESTERN RAILWAY CO.

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement on August 23, September 11, 12, 13, 1967 when it used B&B employes to cut and remove brush between MP 140-141 in lieu of regular assigned Track men on Section No. 9 at Brewster, Ohio.

2. Section Laborers E. Romig, H. Koenig, J. Fumari, H. Kepler, I. Lopez and P. Kovatch now be made whole for eight (8) hours each for August 23, 1967, a total of forty eight (48) hours.

3. E. Romig and H. Koenig be now made whole for eight (8) hours at pro rata rate each for September 11, 12, 1967, a total of thirty-two (32) hours.

4. E. Romig, H. Koenig, J. Fumari and H. Kepler now be made whole for eight (8) hours at pro rata rate for September 13, wages a total of thirty-two (32) hours.

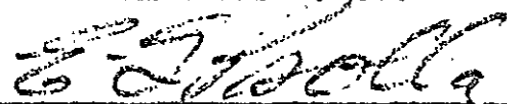
OPINION OF BOARD:

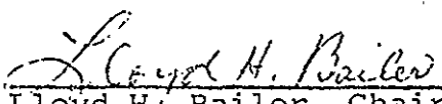
On the claim dates Carrier utilized employees assigned to B&B Gang No. 3, Brewster, Ohio, to cut trees and remove brush along Carrier's right-of-way between MP 140-141. The contention in this claim is that Carrier violated the Agreement--more specifically Rule 2 (Seniority) and Rule 40(b)--by assigning B&B employees work which belongs to Track sub-department employees: namely, Section Gang No. 9 at Brewster, Ohio. The claimants are Section Laborers assigned to this gang. The hours of pay requested correspond with the number of man-hours expended by B&B employees on the disputed work. Rule 2(c) of the Agreement provides that the seniority rights of all employees are confined to the sub-department in which employed. B&B Gangs are in a separate seniority district from Section Gangs.

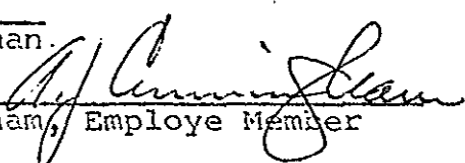
The subject work was of the type customarily performed exclusively by track forces and reserved to them by Rule 40(b) of the Agreement. This was regular right-of-way clearance work and was not of the character which other types of forces properly may perform as incidental to their customary duties--such as clearing brush from signals or from poles carrying communication lines. A sustaining award is warranted.

AWARD:

Claim sustained.

  
E. G. Psolla, Carrier Member

  
Lloyd H. Bailer, Chairman

  
A. J. Cunningham, Employee Member

Dated: July 13, 1971