

Public Law Board No. 2630

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees

and

The Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

1. Carrier violated the Schedule Agreement, as amended, when on January 3, 5, 6, 9, 13, 16, 17, 18, 20, 23-27 and 30, 1978, Machine Operator Donald Morgan performed the duties of a trackman on claimant's prior rights district and Welder Glen Yost on January 30, 1978, performed trackman's duties.
2. Claimant Jerry Sprout, furloughed trackman, be paid as requested in his claim of February 21, 1978, for equal pay of the position.

FINDINGS:

Petitioner contends that Carrier used Machine Operator Morgan to clean snow from tracks and switches on 15 dates in January 1978, while claimant was on furlough.

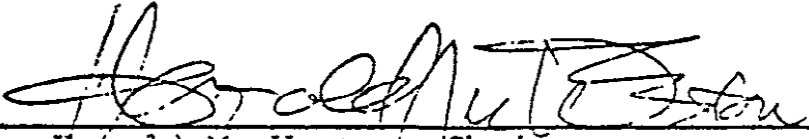
While the claim was under discussion on the property, Carrier unambiguously stated that Mr. Morgan was not junior to claimant in either machine operator or trackman seniority and that he did not clean snow from tracks and switches on January 3, 5, 6, 9, 13, 17 and 18, seven of the dates in issue. Carrier also asserted at that time that Welder Yost was working on January 30 at a derailment site and was not cleaning crossings at the location mentioned by Petitioner. No proof was presented to the contrary by Petitioner, although the burden of establishing all essential elements of the claim rests with Petitioner.

We agree with Petitioner that the burden of proof with respect to the existence of an emergency rests with Carrier. The mere fact that snow has accumulated on tracks and switches does not show, in the absence of further particulars, that Carrier was confronted by an emergency on the seven remaining dates. However, the record does not indicate the amount of time spent in clearing the snow on those days, although that information is essential to Petitioner's case. Without it, this Board is not in a valid position to hold claimant's rights were violated to an appreciable degree.

A sufficient factual showing has not been made and the claim will be denied.

AWARD: Claim denied.

Adopted at Baltimore, Maryland, *August 15,* 1981.


Harold M. Weston, Chairman


Carrier Member


Employee Member