

PUBLIC LAW BOARD NO. 4402

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM

1. The Carrier violated the Agreement when it assigned a track inspector to perform laborer's work on Patrol Gang #2 on April 16, 17, 18, 20, 30 and May 1, 1986 (System File #5 Gr./GMWA 86-8-22C).
2. As a consequence of the aforesaid violation, furloughed Laborer M. E. Ogden shall be allowed:

**** all time at his laborers rate of pay for work performed by Track Inspector Miller and any overtime that might have occurred. He is also entitled to any vacation benefits that he might have earned had he been working."

OPINION OF BOARD

Claimant (a furloughed laborer) and W. Miller (a track inspector) hold seniority in the Carrier's Track Sub-Department on the same seniority roster (Roster 1). On the dates indicated in the claim, Track Inspector Miller performed the following work:

DATE	FUNCTION	TIME
04/16/86	Raised joints M.P. 146.0	30 mins.
04/17/86	Raised joints M.P. 137.0	10 mins.
04/18/86	Raised track M.P. 218.0-240.0	2.0 hrs.
04/18/86	Gaged track Metropolis Yards and M.P. 226.0-250.0	2.0 hrs.
04/20/86	Dumped rock M.P. 215.0-220.0	2.0 hrs.
04/30/86	Assisted in retieing and raised road crossings M.P. 215.0-250.0	10.0 hrs.
05/01/86	Fixed a broken rail on siding in Metropolis, Illinois	2.0 hrs.

The Organization asserts that by performing the above-described work, Track Inspector Miller improperly performed work belonging to sectionmen and therefore seeks compensation on behalf of Claimant. The Carrier argues that the governing rules do not

grant sectionmen the exclusive right to perform all work incident to track repair and, in the past, track inspectors have performed the tasks the Organization claims are reserved to sectionmen.

In his statement, Miller contends "This work was laborers work which I completed while assigned as a track inspector [and] I realize that the ... work is and has always been the work of laborers ... I was doing as instructed by the carrier". Statements submitted by the Carrier from former track inspectors show that in the past track inspectors have performed work of the nature performed by Miller on the claimed dates. Those statements relied upon by the Carrier are disputed by the Organization's General Chairman (a former track inspector and roadmaster).

Rule 55 (Classifications of Work) provides:

A. 1. Track Inspectors.

An employee assigned the responsibility for the proper inspection of the tracks, roadway and right-of-way on his district(s)

* * *

Q. Sectionmen.

Employees assigned to constructing, repairing and maintaining roadway and track and other work incident thereto.

The Organization has not carried its burden. The rationale stated in PLB 2203, Award 24 involving a similar dispute concerning track gauging by a foreman as opposed to a furloughed trackman on the same seniority roster is applicable to this case:

Track gauging is bargaining unit work performed normally by trackmen. We can appreciate the concern of the Organization when a foreman is used to handle such work, particularly at a time when a trackman, in this case the claimant, is on furlough.

However, here the foremen and trackmen are in the same bargaining unit and on the same roster. Moreover, neither the Scope rule, which is of a general nature, nor any other provision of the applicable agreement imposes any restriction on the use of foreman to gauge tracks. Nor, so far as the record shows, does any practice on this railroad bar foremen from performing those duties. On the contrary, it appears that foremen have historically attended to those

functions.

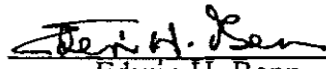
Of course, under many agreements, any use at all of foremen to perform the work of their subordinates constitutes a violation. However, the rules and practices on this property do not prohibit such work assignments and there is nothing in the record that suggests that foremen are performing the work in question to any greater degree or in any different fashion than in the past.

The Organization's arguments seeking to distinguish Award 24 in that on this property Rules 55A and 55Q impose the kinds of restrictions discussed in Award 24 are not persuasive. *See* Third Division Award 12501 ("The mere inclusion of a classification rule does not, by itself, mean that the work of each classification will be restricted to the employees of the class. This is especially true where, as in this case, the several classifications are grouped in the same seniority class.").

Third Division Award 27696 involving work performed by a machine operator instead of a trackman cited by the Organization is distinguishable. There, the categories of employees were on separate seniority rosters and the work performed lasted an entire month immediately upon the abolishment of a trackman's position. Here, the categories of employees are on the same seniority roster and the work was nowhere near as extensive as in that award.

AWARD

Claim denied.


Edwin H. Benn
Neutral Member


E. J. Kallinen
Carrier Member


P. S. Swanson
Organization Member

Denver, Colorado
January 15, 1991