

BEFORE PUBLIC LAW BOARD NO. 4684

Case No. 9

TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION
and
NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Union that:

1. Carrier violated the Agreement Rules, particularly Rules 1, 37, and 38, when it failed to call Claimant H. A. Sharpe to perform the duties of his assignment and instead used employees not of our craft and class to perform work assigned to the janitor position at LaSalle Street Station on dates of February 9, 10, and 16, 1988; and

2. Carrier shall now be required to pay the Claimant, Mr. H. A. Sharpe, three (3) hours at the straight time rate for each date of February 9, 10, and 16, 1988.

FINDINGS:

Claimant H. A. Sharpe was employed by the Carrier as a janitor at its LaSalle Street Station, Chicago, Illinois.

The dispute in this case centers around the assignment by the Carrier of the duties of salting the platforms and clearing the platforms of light snow and ice at the LaSalle Street Station to employees K. Richter (electrician) and W. White (machinist) rather than to Claimant H. A. Sharpe (janitor) on the dates of February 9, 10, and 16, 1988.

The Organization contends that the work in question is such that has previously, historically, and traditionally been assigned to the LaSalle Street janitor. The Organization objects to the Carrier's assignment of the work to employees whose positions do not fall within the craft and class covered by the

working agreement between the parties, being in violation of Rule 1. The Organization further contends that no negotiations or agreements were made to remove the disputed work from the janitors' "position and/or work rule," and, therefore, the Carrier wrongfully assigned the work to employees whose "position and/or work rule" does not specifically describe the disputed work as work they should be performing. The Organization asserts that the reason that the Carrier assigned the work to employees not of the proper craft and class was to attempt to circumvent the payment of overtime to the Claimant, being in violation of Rule 37 and 38. The Organization also maintains that the Carrier, in disallowing the Organization's claim on behalf of the Claimant, failed to provide specific reasons for such disallowance, which is in violation of Rule 59A.

The Carrier takes the position that the employees who were assigned the disputed work on the dates in question were part of its "maintenance force" which has had the responsibility of removing snow and ice from the platforms in and around the LaSalle Street Station. The Carrier contends that the removal of snow and ice is not and never has been a duty exclusively assigned to the janitorial forces at the LaSalle Street Station or anywhere else in the system. The Carrier asserts that the salting of platforms after the snow and ice are removed is a duty assigned to the on-duty janitor at the LaSalle Street Station, but is not an exclusive duty. The Carrier further states that Janitor D. McCarthy was on duty on the dates in question and assisted in spreading salt when necessary and, therefore, there

was no need to call Claimant H. A. Sharpe to come on duty at the facility since no overtime work was required. Therefore, the Carrier maintains that Rule 37 is not applicable to this case; Rule 1 does not exclusively reserve the work to janitors; and the claim under Rule 38 should be denied.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has not met its burden of proof that the clearing of ice and snow from the platforms at the LaSalle Street Station is work that exclusively belongs to members of its craft.

The record reveals that although the janitorial staff often removed snow and ice from the platform and spread salt, that work is also the responsibility of the B & B employees and Maintenance of Way employees. At the time of the incident in question, there was no overhead protection for the walkways to and from the station, and both the janitorial and maintenance forces were assigned the work of keeping the platform clear of snow and ice. The record seems to indicate that the salting and snow removal at the LaSalle Street Station was done by the B & B department, among others, and has been previously the responsibility of the engineering department. Although, on occasion, janitors have been held after the regular shift to perform the clean up work, there is no evidence of janitors ever being called in on overtime to do that work.

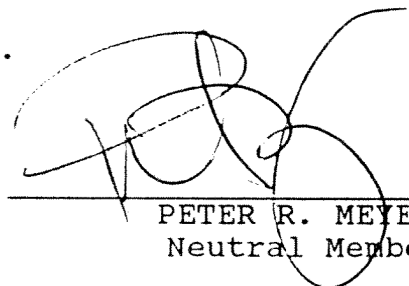
The Organization bears the burden of proof in cases of this

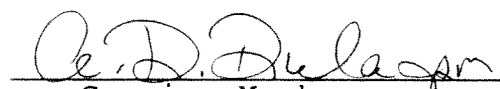
kind. It did not meet its burden here, and the claim must be denied.

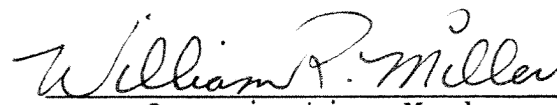
It should be noted that although the Board is not willing to sustain this claim because of the inadequacy of the original Carrier answer to the claim, we strongly suggest that the rules require a much more substantial answer than simply, "Your claim is not supported in accordance with your Schedule Agreement and rules of your labor contract." Mr. Dula's subsequent response at the next step, nearly three months later, is more like what is contemplated by the rules. This Board strongly suggests that the Carrier make more complete answers in the future to claims or face the possibility of having a claim sustained simply because the answer is insufficient.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

Date: 10-9-91