PUBLIC LAW BOARD NO. 5564

Brotherhood of Maintenance of Way Employees	)	AWARD NO. 33
	)	CASE NO. 33
and	)	
Northeast Illinois Regional Commuter Railroad Corporation	)	

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that the Carrier violated Appendix O, Section 19 (paragraph 3) and Rule 18(k) of the Agreement on January 10 and February 15, 2010 when it assigned Track Department employees instead of Bridge and Building (B&B) Department employees to load salt boxes at various platforms on the Metra-Electric District."

OPINION OF BOARD:

Public Law Board No. 5564, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The Claimants in this case are Bridge and Building employees who were, when events giving rise to this dispute occurred, assigned to B&B Maintenance Gang 231 headquartered at the Metra KYD facility in Chicago, Illinois. The record establishes that on January 10 and February 15, 2010, the Carrier assigned a track maintenance crew to load salt boxes at certain passenger platforms on the Carrier's Metra-Electric District. The Organization subsequently submitted the instant claim, arguing in principle part that Claimants should have been called in on overtime to perform this work and citing Rule 18(k) and Appendix O, Section 19 in support. In denying the claim, the Carrier argued that Appendix O, Section 19 specifically addresses the assignment of work when snow and ice must be cleared from the passenger platforms, and that is not what occurred here. It was further argued by the Carrier that filling salt boxes on passenger platforms has never been work performed exclusively by B&B employees in the past, and thus, neither the spirit nor the letter of the Collective Bargaining Agreement was violated.

In relevant part, Appendix O, Section 19 states:

During snow emergencies, it often becomes necessary to call track, B&B, water service, welders, and machine operators out to clean switches, plow snow, and clean platforms. This is usually done on either a district or system wide basis...

The normal procedure is for B&B forces to clean platforms and for track forces to first clean switches. Then once all switch work is complete, track forces assist B&B personnel in cleaning platforms...

Clearly, Appendix O provisions cited by the Organization in support of this claim fail to specifically mention filling platform salt boxes, and cited Rule 18(k) only refers to the preferential assignment of overtime continuous with regular work periods. Thus, in order for the Organization to prevail in the instant matter, there must be evidence in the record that; 1) the disputed work was performed in connection with a snow emergency; 2) that filling salt boxes is considered "cleaning platforms" within the intent and meaning of Appendix O; 3) that filling salt boxes is expressly reserved for B&B forces by agreement or consistent practice; and 4) that track forces, or other Carrier employees, have never traditionally performed that work. On each of the four points, we conclude that the Organization failed to meet its burden of proof.

First, the instant complaint does not indicate that the disputed work was performed by Track Department personnel in connection with a snow emergency, which is a threshold requirement for all subsequent Appendix O, Section 19 provisions. Second, the Organization failed to establish that even if snow emergencies had occurred on January 10, 2010 and February 15, 2010, filling passenger platform salt boxes is, and always has been, considered synonymous with "cleaning platforms." The Organization did argue that, "There can be no real question that the loading of salt boxes is work in connection with the cleaning of platforms," and certainly that could be true under certain circumstances. However, it is also possible that salt boxes might be filled on sunny dry days in anticipation of coming snow, and in such cases, the task could not, in substance or in nature, be viewed as work "in connection with the cleaning of platforms."

Third, there is absolutely no evidence in this record that filling salt boxes (whether on snowy days or a sunny ones) is, or ever has been, work belonging exclusively to employees in Claimants' assigned work classification. Because this is an overtime claim based primarily on the theory of "exclusivity," it was incumbent upon the Organization, having the burden of proof in this contract case, to substantiate its contention that the Agreement was violated when another work group was assigned to perform the contended-for tasks. We find, upon the whole of this evidence, that there is no such substantiation. Finally, the Organization failed to show that track forces, or other Carrier employees for that matter, have never traditionally performed the disputed work, and this is just the flip side of the "exclusivity" coin.

The sole basis for the Organization's claim here is that no other work group, (and track department employees in particular) had a contractual right to fill platform salt boxes on the dates of claim, and in the end, there is simply no contractual support for such an assertion. The Organization had the burden of proving every element of its case here, and when all was said and done, there was simply insufficient evidence of a genuine Collective Bargaining Agreement violation. For all the foregoing reasons, then, we rule that the claim must be, and is, denied in its entirety.

AWARD

Claim denied.

ANN S. KENIS, Neutral Member

Tim Martin Hort
Carrier Member

Kevin Evanski
Organization Member

Dated this 30 day of August, 2013.