Award No. 2569
Docket No. 2414
2-DS-TWUofA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO (Railroad Division)

DONORA SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That it is improper for the Carrier to institute a practice of assigning work to a certain department and after having said employes do this type of work for longer than a year's period, then have other employes of another department do this work.

2. The Organization feels that since this was done that Mr. Thomas Harris, Diesel Mechanic, 2nd class who was entitled to do this work be compensated four (4) hours at time and one-half rate on account of carrier having a trackman wash the company car on March 9, 1956.

3. That the Carrier did assign the washing of company cars to the Locomotive Shop employes and should continue to have these employes do this work.

EMPLOYES' STATEMENT OF FACTS: That Mr. Thomas Harris is an employe of the locomotive department.

That Mr. Harris was entitled to do this work.

That the carrier did assign the washing of cars to the locomotive shop department and this department did this type of work for a period of a year (employes' Exhibit No. 1) and even before these records were kept by the employes.

That the Railroad Division, Transport Workers Union of America, AFL-CIO, does have a collective bargaining agreement effective August 29, 1949 and revised to September 1, 1955, with the Donora Southern Railroad Company, covering the Maintenance of Equipment Department, copies of which

cars is not traditionally the work of diesel mechanics, nor does it require mechanical skill to perform it. The language of the Third Division in its Award No. 7170 has direct bearing under these circumstances:

> "The work of the railroads is divided among many well defined groups of employes. Each jealously guards that work which historically and traditionally and by the development of special skills has become recognized as its exclusive property. Under the scope rules of the various agreements, the rights to these various types of work are set out and the Carriers who are parties to the agreements are bound to respect these rights. However, there are areas of work wherein no class or craft has claimed exclusive jurisdiction—such as the work which is the subject of this dispute. We cannot hold in such case that Carrier is precluded from assigning this work when necessary because it is not covered by the scope rule in any of its agreements. Rather, we follow the view in the latter three awards cited above. If the new duties and responsibilities are in fact of sufficient proportion so that the employes feel that they are entitled to additional compensation, their recourse is to negotiation with the Carrier under Section 6 of the Railway Labor Act. See Award 7093."

This claim is governed by the principle established by this Division in its Award No. 1110:

> "The sole question here is whether the work of maintaining and repairing automotive trucks and tractors belongs exclusively to the employes of the mechanical department.
>
> * * * The mere fact that the machinists have in some instances done the work is not of importance where it does not appear that there has been a practice under which they have done it exclusively."

It is therefore respectfully submitted that this claim must be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

This carrier owns two (2) automobiles, a sedan and a carry-all, which are used in company business. On March 9, 1956, one (1) of these cars was washed by an employe in the Maintenance of Way Department. The claimant, a Diesel mechanic, 2nd class, asserts that the work of washing this car belonged to him and he asks that he be paid for four (4) hours at the time and one-half rate for the alleged violation.

The organization concedes that there is no express rule in the agreement that supports the claim but it is asserted that there has been a long established practice on the property that work of washing cars belongs to employes in the locomotive shop. To support the claim the organization

produced a statement showing that between February 7, 1955, and February 3, 1956, locomotive shop employes washed or serviced a company car on fifteen (15) occasions. There is no showing that this constituted all the car washing that was performed or that such work was performed exclusively by locomotive shop employes. The carrier says it keeps no records of car washings but that this service has been rendered by both mechanics and maintenance of way employes in the past.

We are of the opinion that the organization has failed to discharge the burden resting upon it to establish a long and consistent practice as would justify us in holding that mechanics have an exclusive contractual right to the work of washing company automobiles.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.