# Award No. 4235
# Docket No. 4029
# 2-MP-FO-'63

## NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.**

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## PARTIES TO DISPUTE:

### SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Firemen & Oilers)

### MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than laborers were improperly used to clean Feed, Flour and Grain cars at the Carrier's old Yard 4, Paragould, Arkansas, on the dates of October 24, 25, 26, 1960.

2. That accordingly the Carrier be ordered to compensate Laborer Rufus Cox 2½ hours at his applicable time and one-half rate for October 24, 1960, and 3 hours at the same rate for October 26, 1960 making him a total of 5½ hours: Laborer A. L. Martin 3½ hours at his applicable time and one-half rate for October 25, 1960.

EMPLOYES' STATEMENT OF FACTS: For many years the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, maintained their car department facilities at Paragould, Arkansas.

The carrier has maintained in part the old yard at Paragould where Tracks 4 and 5 are located and do use them, which is evidenced by this dispute. The carrier employed two laborers at Paragould and they were regularly assigned as such in the car department. Their duties, among other things, consisted of cleaning Feed, Flour and Grain cars.

Laborers Rufus Cox and A. L. Martin, hereinafter referred to as the claimants, were regularly assigned as laborers at Paragould, Arkansas during the period set forth in the claim with a regularly assigned work week and hours of service as follows:

Rufus Cox: 12 Noon to 8 P. M. Monday through Friday; rest days Saturday and Sunday

is no agreement at all, this means there is no scope rule or any other general rules. There are the only men employed by the carrier to clean cars who are represented by any organization.

The exceptional case proves that the work of cleaning cars has never been contracted to any craft or class of employes. It has not been contracted to laborers either in part or in whole. The work is performed by independent contractors, carmen and others as necessary to meet service requirements.

Applying these pinciples to the instant claim at Paragould, we see that the duties of laborers have never been classified and no particular item of work has ever been contracted exclusively to laborers. We see that a position of cleaning cars preparatory to loading is not even listed in the scope rule. The carrier has no obligation under the agreement to use laborers to clean cars. This does not mean the carrier may not use laborers for that purpose in line with service requirements. At Paragould on dates of claim, the level of employment did not permit the use of laborers to perform the work during their regularly assigned hours. The carrier was not required to work them overtime to perform the work. The carrier followed the practice of contracting out the work, a practice of many years standing at many points on the railroad.

The agreement must be applied uniformly at all points where laborers are employed. The agreement cannot be applied one way at one point and another way at another point. The record shows conclusively no rule in the agreement contracts the work in dispute to laborers exclusively or otherwise and the work of cleaning cars preparatory to loading has been performed by other than laborers at many points where the service is required. The work in dispute is not the work of laborers exclusively either by contract or by practice.

For the reasons stated in Award 2215 and 2845 of this Division as well as those stated above, 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.

Parties to said dispute waived right of appearance at hearing thereon.

The Agreement names the classes of employes covered, including shop, enginehouse and car department laborers, but does not describe their work.

The basis of this claim is that the cleaning of feed, flour and grain cars at Paragould, Arkansas, has consistently been assigned to laborers under the Agreement and that the latter was violated on three consecutive days in October, 1960, when the carrier had this work done on six, seventeen and eighteen grain cars, respectively.

The carrier contends that the work of cleaning cars preparatory to loading has never been contracted, exclusively or otherwise, to any craft or class

of employes, and has never been exclusively assigned to or performed by laborers covered by this Agreement, but like other service sporadic in nature and not lending itself to steady or full employment has been performed by other employes also, or contracted out. Twenty other places are named throughout the system where this work has been performed by independent contractors, without claim or complaint of Agreement violation.

The Organization does not dispute those statements but repeats that at Paragould only laborers have been assigned to do this work at Paragould, at least since 1928.

Under these circumstances the work has not been contracted to the employes covered by the Agreement, and the latter has not been violated. See Awards 2215 and 2845.

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 June, 1963.

## DISSENT OF LABOR MEMBERS TO AWARD NO. 4235

The record presented to the Board discloses that prior to the date of this dispute the work in question had been assigned to the employes of the Firemen & Oilers' craft and performed as a part of their assigned duties under the controlling agreement.

The contracting of this work to an independent contractor without negotiation or discussion with the employes constitutes an arbitrary change in "working conditions" in direct violation of the Railway Labor Act. The assumption of the majority that the Scope Rule does not describe the work of the claimants is in error and we must dissent from this Award.

**James B. Zink**

**C. E. Bagwell**

**E. J. McDermott**

**T. E. Losey**

**R. E. Stenzinger**