



Award No. 5316
Docket No. 5033
2-NP-FO-'67

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.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Firemen and Oilers)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Car Department Laborers Emil Pudwill, E. E. Hunsaker and L. H. Pankey were unjustly dealt with when the filling of fuel tanks for diesel units in mechanical refrigerator cars was unjustly assigned to other than Car Department Laborers.

2. That accordingly Carrier be ordered to restore the work of filling such fuel tanks to Laborers employed in the Pasco Car Department.

EMPLOYES' STATEMENT OF FACTS: Emil Pudwill, E. E. Hunsaker and L. H. Pankey, hereinafter referred to as the Claimants, are all employed as Laborers in the Car Department of the Northern Pacific Railway Company, hereinafter referred to as the Carrier, at its Car Department in Pasco, Washington. Claimant Pudwill has a laborer seniority date of February 24, 1951; Claimant Hunsaker's seniority date is August 8, 1956 while Claimant Pankey was first employed September 1, 1959.

All three claimants are assigned to the first shift, 7 A. M. to 3 P. M. On or about November 12, 1956 equipment for fueling storage tanks for diesel engines in mechanical refrigerator cars was placed in operation at the Pasco Yards, and Laborers were assigned to the work and duties of fueling storage tanks of the mechanical refrigerator cars. Laborers continued to perform this work exclusively on the first shift until on or about September 1, 1963, when Carrier contracted the work in question to the Texaco Oil Company bulk agent at Pasco, Mr. H. L. Meyers, altho the laborers were still available on the first shift to perform this work.

This dispute has been handled with Carrier Officials designated to handle such affairs, all of whom declined to adjust the dispute.

The Agreement effective March 1, 1953, as subsequently amended is controlling.

2. The supplying of mechanical refrigerator car fuel tanks direct from a storage tank was discontinued effective November 1, 1963.

3. The work of supplying mechanical refrigerator car fuel tanks direct from a tank truck at Pasco is not included within the scope of the March 1, 1953 Firemen and Oilers' Agreement and traditionally is not the work of employes covered by that agreement.

4. The procedure followed at Pasco in fueling mechanical refrigerator tanks is consistent with the practice followed throughout the system.

For these reasons the request of the Employees should be denied in its entirety.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employees and is made a part of the particular question in dispute.

Oral hearing is desired.

(Exhibits not reproduced.)

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 were given due notice of hearing thereon.

Claimants are laborers in the Carrier's car department at Pasco, and the claim is that they "were unjustly dealt with when the filling of fuel tanks for diesel tanks for diesel units in mechanical refrigerator cars was unjustly assigned to other than car department laborers."

In 1956 the Carrier adopted the use of such mechanical refrigerator cars containing diesel units with oil supply tanks. At Pasco, but apparently not elsewhere on its system, the Carrier installed an oil storage tank from which the refrigerator car oil tanks were filled by laborers on the first shift, but by carmen at other times. In 1963 the Carrier abandoned the use of the storage tank and arranged for the oil supplier to deliver the oil directly to the diesel tanks in the refrigerator cars, thus giving rise to this claim. No positions were affected by the change, and the Claimants are filling their regularly assigned positions the same as before.

The agreement contains no classification of work rule, but only a Scope rule naming the classes of employes covered. It provides as follows:

"SCOPE

Rule 1. These rules shall govern the hours of service and working conditions of the following classes of Mechanical Department employes carried on Mechanical Department payrolls:

* * * * *

Class C

Car Department laborers, supplymen, shop watchmen, and other Car Department employes not covered in Classes A and B.

Note: This rule shall not be construed as a classification of work rule to prevent combining of several classes of work on one assignment or to prevent employes covered by this agreement from performing any work to which assigned."

This is clearly not a classification of work rule. Awards Nos. 2845 and 4498.

The Employes contend, first that the "supplying" of oil to the diesel oil tanks in the refrigerator cars is included in their duties because "supplymen" are named in Class C along with laborers; but so are "shop watchmen, and other car department employes not covered in classes A and B." Obviously this no more confers upon laborers the duties of supplymen than the duties of watchmen and other car department employes not covered in classes A and B; it merely groups those types of employes in Class C to govern their hours of service and working conditions, as stated in the first clause of Rule 1. Award No. 2215.

Although there is no classification of work rule, the employes contend that these laborers have "gained a contractual claim, by tradition, historical practice and custom."

They admit that at other stations than Pasco "the work of fueling mechanical refrigerator cars has never been assigned to members of the Firemen and Oilers Craft," and state that it is "because the Carrier does not have the necessary facilities or equipment to perform the work such as it does at Pasco." Whatever the reason, this statement is an admission that at points other than Pasco, laborers have not been assigned this work and do not claim to have gained a contractual right to it. This admission is reinforced by their statement in rebuttal "that the fact that fuel tanks on mechanical refrigerator cars are filled direct from tank trucks at Auburn, Yardley, Laurel and Northtown is irrelevant * * *;" for that statement affirms the general practice on the system.

Annexed to the Employes' submission as an exhibit is an affidavit by one of the Claimants stating that he was working as a carshop laborer at Pasco when the Carrier installed "a fueling station for mechanical refrigerators" there in 1956, and that either he or some other car shop laborer "did the fueling of the diesel engines" until 1963. There are also affidavits by two carmen stating that they were working as such at Pasco when the equipment for fueling diesel engines on mechanical refrigerators was put into operation there; that "The fueling of these diesel engines was not assigned to Carmen nor did the Carmen or Carmen Helpers ever claim this work. This work was done by the Car Shop Laborers as part of their regular duties."

But the affidavits are disproved by the Employes' statement in their submission that the Carrier "did, on the second shift at Pasco, assign this work to other than laborers." They contended that in so doing "the Carrier

was in error," and in their rebuttal they say that it was done "only because the laborers assigned to perform this work on the first shift at Pasco Yards were not properly protecting their rights by filing protests * * *." Whatever the cause, the work has not, even at Pasco, been exclusively performed by laborers. It is stated on the last page of the Employees' Submission that "laborers have, in the past been performing (it) exclusively on the first shift at Pasco." (Emphasis ours.)

Except as specifically limited, the Agreement is of uniform system-wide application, and so are the Employees' contractual rights thereunder, whether defined by it or by tradition, historical practice or custom. No exclusive right to certain work can be established by tradition, practice or custom at one point on the system or on only one shift at that point, and the fact that on one shift or a one point, but not elsewhere, or at other times not even there, certain work has been assigned to certain employees, cannot give them a contractual right to it.

Furthermore, as above noted, they state that only at Pasco was such a storage tank ever installed and mechanical refrigerator cars fueled from it by the Carrier's employees, and that elsewhere they have been "filled direct from tank trucks," apparently by the supplier. Whatever the former practice at Pasco, nothing in the Agreement or in tradition, practice or custom deprives the Carrier of the right to adopt at Pasco the fueling method long used elsewhere throughout the system. The claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois this 26th day of October 1967.