

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: ( Int'l. Brotherhood of Firemen and Oilers  
( System Council No. 16  
( Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That, in violation of our current agreement, Mr. C. O. Perkins was furloughed at end of tour of duty May 6, 1980.

2. Then, since May 6, 1980, others than members of the International Brotherhood of Firemen & Oilers (Carmen and Foremen) have performed the duties that were previously performed by Mr. C. O. Perkins.

3. That Mr. C. O. Perkins should immediately be restored to his position with all seniority rights unimpaired, vacation, health and life insurance be paid and compensated for all time lost plus 6% annual interest on all such lost wages, during the time held out of service.

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 employes 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 pivotal issue in this dispute is whether Claimant exclusively performed the work he asserts was transferred to carmen forces when his position was abolished on May 6, 1980. Claimant argues that he was unjustly furloughed in violation of Rule 1 of the Controlling Firemen and Oilers Agreement which he contends reserves this work to laborers covered by this Agreement. He avers that such work as cleaning offices, cleaning pits, cleaning up shop ground (both roundhouse and car shops) sandhouse man, locomotive supplyman, transfer and turntable operator, fueling and sanding all locomotive engines in diesel shops was performed by him at the work locations where carmen now performed this work and maintains these assignments violate Rule 1.

Carrier contends that his position at Hearne, Texas was reduced because of declining business conditions and avers that over 150 Mechanical Department employees were force reduced on the Southern Pacific, Texas and Louisiana Lines. It argues that Rule I neither defines nor describes the work of the position held by Claimant nor specifically reserves the work delineated in the claim letter. It asserts that the duties of this position have changed during the past few years, but more pointedly contends that carmen have serviced locomotives in the yard and maintenance of way crews have performed the cleaning of pits.

The Carman's Organization as a third party of interest apprised the Board by letter, dated February 3, 1982 that it will not intervene herein, but disclaimed waiver of any further rights to intervene in a similarly configured dispute.

In our review of this case, we cannot be unmindful of our requirement that a part asserting work exclusivity must demonstrate that a specific rule or provision reserves such work to him. The Scope Rule (Rule 1) herein does not define or list the varied and concomitant duties of each specified position and Claimant's assertion of past practice exclusivity has not been buttressed by persuasive corroborative evidence. It may well be that Claimant performed these duties or a substantial portion of them in the past but he provided us no proof that he alone exclusively performed them. Assertions alone, particularly where denials are present, are insufficient to justify an affirmative award. Without this proof, we would be interpolating by judicial inference that his claim is valid, which would contradict our evidentiary requirements for work exclusivity claims. In Second Division Award No. 7378, which sets forth our basic standard for exclusivity assessments, we stated in part that:

"There is ample precedent, in rulings by this Board, that in the absence of an express assignment of work by a specific rule or provision of an Agreement, past practice is critical in any determination as to whether that work, within the confines of the Agreement, belongs exclusively to a particular craft.

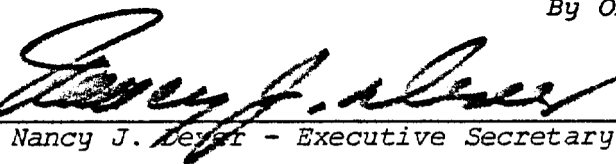
Applying this benchmark principle to the facts at hand, we cannot conclude that Claimant was able to establish that he exclusively performed the work contested.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Meyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984