

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

(Int'l. Brotherhood of Firemen and Oilers
(System Council No. 19
Parties to Dispute: (
(Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employees:

1. That Southern Pacific Transportation Company (Pacific Lines), violated Rules 6 and 7 of the current agreement between the aforementioned Carrier and the Firemen and Oilers Craft, when the Carrier abolished seven (7) jobs of Laborer/Bus Driver, and rebulletined only one full time job with a relief. The Carrier is using Clerks and Taxis to transport train and engine crews. Also they are using Firemen and Engineers to supply and clean the locomotive cabs. This is work that was normally performed by the Firemen and Oilers that operated the carryall.

2. That accordingly the Southern Pacific Transportation Company be ordered to pay the Claimants (B. F. Teman, D.L. Deines, W. F. Groeze, H.M. Nettles, A. R. Collins S. L. Halstead) the Difference that they received when they operated the carryall and what they now received.

This is a continuing claim, until the work of operating the Carryall and the transporting of train and engine crews and the servicing and supplying of the locomotive cabs, are returned to the Firemen and Oilers Craft.

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 were given due notice of hearing thereon.

The petitioning Organization contends that Carrier violated Rules 6 and 7 of the Firemen and Oilers Agreement when Carrier assigned non Agreement covered employees to perform work that was traditionally performed by Firemen and Oilers. The disputed work involved in operating of a carryall to transport train and engine crews in the Eugene-Springfield areas, the transporting of helper crews to outgoing areas and the cleaning and supplying of locomotive cabs at Springfield, Oregon. It asserts that the abolishment of the seven (7) Laborer/Bus Driver jobs and the rebulletining of only one full time position with relief on April 18, 1980 was a clear violation of the Agreement since Carrier then used Clerks and Taxis to transport train and engine crews and Firemen and Engineers to supply and clean the locomotive cabs. The Organization avers that this work has been consistently performed by Firemen and Oilers for over twenty-five (25) years and argues that the misassignments are continuing violations.

The Brotherhood of Railway Airline Clerks as a third party of interest contends that employees represented by its organization have operated carryall equipment around the clock at the Eugene Terminal for over twenty five (25) years, and asserts that the cleaning and supplying of locomotives was performed by different crafts depending upon locational assignments. It argues that Carrier recognized the Clerk's right to supply locomotives when the National Railroad Adjustment Board in Third Division Award No. 20638 ruled accordingly and Carrier subsequently agreed on April 14, 1975 to compensate clerks at the rate of their assignment when they are required to perform this work.

Carrier contends that it is not constrained by the Firemen and Oilers agreement from assigning other employees to transport train service crews. It argues that the holdings in Third Division Award Nos. 10326, 15596, 17140 and Award 33 of Public Law Board No. 843 involving itself and the Brotherhood of Railway Airline Clerks dispositively show that the work of transporting crews does not exclusively accrue to any one craft. It argues that the work of cleaning and supplying locomotive cabs has been performed by members of the Mechanical Department employees at Eugene Yard and asserts that such work has been discontinued at outlying points. It further avers that the claim is without merit since the claim lacks specificity as to the specific dates of occurrence and the length of time of the asserted violation. It maintains that neither Rule 6 nor Rule 7 of Petitioner's Agreement exclusively reserve this work to Claimants and asserts that past practice and arbitral rulings explicitly establish this point.

In considering this case, the Board finds that petitioners have not established exclusivity to the disputed work. We find no clear language in Rules 6 or 7 that would unmistakably reserve this work to the Firemen and Oilers nor any solid convincing evidence that only members of this craft performed this work. Both Carrier and the third party intervenor have persuasively shown that clerks operate the carryall in the Eugene area to transport train service crews and petitioners have not proven that they exclusively cleaned and supplied locomotive cabs at Springfield. In fact, Carrier's assertion that only employees of the Mechanical Department cleaned and supplied locomotive cabs at the Eugene Yard or occasionally outside that location has not been refuted. In order to prevail, Claimants were obligated to show clear rule support for their position or persuasive evidence that they were customarily and exclusively assigned this work. The record does not contain such proof.

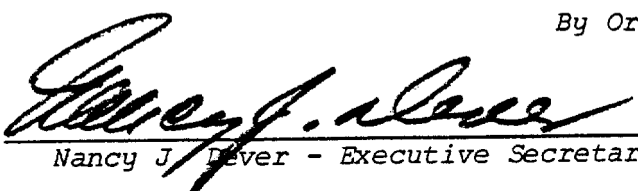
Accordingly, consistent with our decisional rationale in Third Division Award Nos. 10326, 15596 and 17140, we will deny the claim. The necessary element of exclusiveness has not been established.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

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