

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers  
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current and controlling agreement employees other than Laborers were improperly used to perform the work of operating the fork lift to pick up and deliver material and equipment, dump trash into the dumpsters, wash down floors under the ramps and operate the mechanical sweeper to clean the floor in the engine hours and locomotive shop at Seaboard System Railroad, Uceta Shops, Tampa, Florida.

2. That accordingly, the Carrier be ordered to compensate Laborers' time and one-half rate of pay for the amount as described on dates below: E. L. Williams, seventeen (17) hours and forty (40) minutes for December 9, 13, and 16, 1983, and January 17, 1984. G. J. Brown, fourteen (14) hours and forty (40) minutes for December 9, and 16, 1983 and January 7, 1984. E. I. Everett, four (4) hours for January 7, 1984. K. E. Ragan, twenty-four (24) hours for December 13, 15 and 16, 1983. M. E. Smart for eight (8) hours for December 8, 13 and 14, 1983.

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 employees involved in this dispute are respectively carrier and employees 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.

Claim of the Organization alleges that work contractually reserved to the Fireman and Oilers Craft was assigned to other Crafts in violation of the Agreement. The Organization maintains that by Supplemental Agreement (signed July 21, 1971, Paragraph C, Part 1), under the Scope Rule and by history, and past practice the operation of fork lifts, movement of materials, dumping of trash containers, driving of sweepers and cleaning of areas as made a part of the Claims herein, and reserved to their Craft. The Organization maintains that violations occurred when Carrier required others to perform their work.

The Carrier argues that the Supplemental Agreement explicitly states (Section 6) that it "is not to be construed as a scope rule or classification of work rule." It further argues that the Scope Rule of the Agreement is a general rule which only lists classes of employees and their duties. It denies that such work has been assigned or reserved historically or by past practice to those employees covered under the Scope of the Fireman and Oilers Agreement. It specifically states that "systemwide on this property, employees of every craft and class have performed these tasks in the regular performance of their duties."

In the case at bar, this Board is guided by the long held principle that the weight of the evidence to substantiate the Claim rests in these cases with the Organization as moving party (Third Division Awards 19506, 13691). In the instant case, the work performed in each of the Claims has not been shown to be reserved to the Fireman and Oilers. We have carefully read the Supplemental Agreement and the Scope Rule. Neither reserve the disputed work to that Craft. Moreover, we have searched the record for probative evidence that by history and past practice such work as herein disputed has been exclusively assigned and performed. The evidence of record leads to the opposite conclusion, namely, that such work has been performed by numerous other Crafts in the performance of their duties within their work areas. The evidentiary data as developed by the Organization on property does not establish in any of the above Claims that the Agreement has been violated. The burden of proof is on the moving party and as such, this Board denies the Claim since the burden has not been met here.

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 11th day of February 1987.