

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers  
(  
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

1. That for a period in excess of sixty (60) days Electrician and Carmen have been assigned to and performed the work that has historically and by Agreement Scope Rule 1 of the September 1, 1954 Controlling Agreement has been assigned to and performed by the (Laborers) Firemen and Oilers.

2. The Laborer's work being performed by Electricians and Carmen includes but is not limited to the mechanical up-keep for switch engines which includes fueling, sanding, adding oil and water, changing brake shoes and servicing cabs. Additionally Laborers have been in charge of the cleaning and up-keep of the shop facilities at Jonesboro, Arkansas.

3. That this work which amounts to approximately 40 hours per week should rightfully and immediately be once again assigned to Mr. J.W. Baker, a member of the Firemen and Oilers.

4. That Mr. Baker be immediately returned to active service from his laid off status and that he be compensated for this continuing violation of the Agreement beginning March 3, 1987 for eight hours per day at his regular applicable rate of pay, forty (40) hours a week until the work in question is once again properly assigned to the Firemen and Oilers.

5. That the Carrier will reinstate retroactively Mr. Baker's entire health and wefare (sic) plan, seniority rights and vacation benefits as provided for under the current agreement.

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 Organization claimed violation of Rule 1 of the Agreement when the Carrier assigned work such as mechanical upkeep of switch engines and cleaning and upkeep of shop facilities at the Carrier's Jonesborough, Arkansas facility. These Rules are reproduced below:

"Rule 1: Scope

This Agreement shall govern the rates of pay and working conditions of the classes of employees shown below working in and about shops, power plants, train yards and engine terminals in the Motive Power and Equipment Department and does not apply to employees of other departments or other performing similar work not under the jurisdiction of the Motive Power and Equipment Department.

A. Stationary Engineers  
Stationary Firemen  
Power Plant Oilers

Stationary Engineers

Stationary Firemen  
Wood Preserving Works, Houston  
(Maintenance of Way Department)

B. Locomotive Crane Operators  
Lye Vat Attendants  
Acetylene Generator Attendants  
Oil Pumpers  
Engine Watchmen  
Sandhouse Men  
Transfer and Turntable Operators  
Lubricator Fillers  
Tool Checkers  
Engine Washers  
Engine Wipers  
Locomotive Supplymen  
Inside Hostler Attendants  
Motor Truck & Tractor Operators  
Power Plant, Roundhouse, Shop and Car  
Department Laborers  
Gang Leaders (Laborers)

The classification set forth above are not to be construed as intended to preclude combining any of these classes of work on one assignment; in other words, listing all these classes is not intended to mean that the Company is required to have a man or men assigned to each, nor does it prevent one man doing any number of them in one tour of duty.

It is understood and agreed that positions listed above, now under the Motive Power and Equipment Department, will not be transferred from the jurisdiction of the Motive Power and Equipment Department except by agreement between the parties signatory to this agreement."

The Carrier furloughed the only laborer at its Jonesborough, Arkansas facility. The Organization claimed there was enough work available at this facility to justify the employment of a full-time laborer and, as such, the work contractually belongs to the Claimant. The Organization asked that the Claimant be returned to duty with all rights and benefits intact.

The Board notes that the IBEW and Carmen were notified and chose to intervene. Their arguments were taken into account in the Board's decision.

The Carrier contended that a time study showed that not enough work is available to justify the employment of a full-time laborer. This was due to a decline in business, which is economically justified. The Carrier further noted the Scope Rule is general in nature and the work in question was not performed on a systemwide basis by members of the Organization and cites a number of Awards of this Division. In addition the Carrier cited procedural arguments in that the Claim was amended and not submitted to the proper Carrier Officer.

The Board finds the procedural arguments raised by the Carrier not to be persuasive under the circumstances of this case. With respect to the merits, the Board finds the Scope Rule to be of general nature and does not clearly and exclusively assign the work in question to members of the Organization. Likewise, the Organization has failed to bring forth sufficient evidence that it has historically performed this work exclusively on a systemwide basis (see Second Division Awards 9949 and 11151). Therefore the Claim will be denied.

A W A R D

Claim denied.

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Award No. 11602  
Docket No. 11457-T  
88-2-87-2-111

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1988.