

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11604
Docket No. 11478-T
88-2-87-2-133

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 and Oilers
(Southern Pacific Transportation Company
(Eastern Lines)

STATEMENT OF CLAIM:

1. In violation of Rule 1 of the controlling agreement, Mr. M. J. Livings was furloughed at the end of shift on January 23, 1987.
2. That other than members of the Firemen and Oilers (Carmen and Supervisors) have been assigned to and have performed the duties that were rightfully and previously performed by M. J. Livings.
3. That Laborer M. J. Livings should immediately be returned to active service from his laid off status and he be compensated for this continuing violation of the agreement by payment of eight (8) hours per day at his regular rate of pay, forty (40) hours per week from January 23, 1987 until the work in question is once again returned to and properly assigned to the Firemen and Oilers.
4. The Carrier will reinstate, retroactively, Mr. Livings' entire health and welfare plan, seniority, and vacation benefits as provided in 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 previously performed by the Claimant to other crafts at its East St. Louis facility. This Rule is 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 others 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 classifications 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 juris-

diction of the Motive Power and Equipment Department except by agreement between the parties signatory to this agreement."

The Carrier furloughed the Claimant at its Lake Charles, Louisiana facility. The Organization claimed there was enough work available at this facility to justify the employment of the Claimant as a full-time laborer, and, as such, the work contractually belongs to the Claimant. The Organization argued that by agreement and practice the work belonged to the Claimant. The Organization asked that the Claimant be returned to duty with all rights and benefits intact.

The Board notes that the Carmen were notified of the pendency of this dispute, and chose not to intervene.

The Carrier contended 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 is not performed on a systemwide basis and cites a number of Awards of this Division. In addition, the Carrier cited procedural arguments in that the claim was not handled properly on the property.

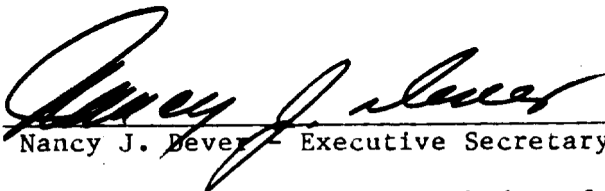
The Board finds the procedural arguments raised by the Carrier not to be persuasive under the circumstances of this case. With respect to the merits, the Board finds the Scope Rule to be of general nature and does not clearly and exclusively assign the work in question to members of the Organization.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

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever Executive Secretary

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