NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Form 1

Award No. 12806
Docket No. 12677
94-2-93-2-29

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"1. The Consolidated Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rule(s) 5-F-1, Scope, Appendix "C", and Past Practice and Customs.

2. Accordingly, Machinist R. Hatten is entitled to the payment as requested an additional eight (8) hours pay at the applicable rate for the day of February 21, 1990 because on this day, 2/21/90, at the instance of the Carrier, Central Penn Retreaders came onto the property at the Enola Car Shop and replaced three tires on the Pettibone Crane."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 initial claim was made for eight (8) hours, based upon the assertion that, on February 21, 1990, Central Penn Retreaders replaced three tires on the Pettibone Crane at the Car Shop.

In response, the Shop Manager advised that the Claimant worked eight (8) hours on the date in question and that "...replacement of, or repairs to tires is not work referred to in the Machinists Scope Rule, therefore performance of such work by someone other than a machinist would not be in violation of the Agreement."

Thereafter, the claim was appealed to the Manager of Labor Relations who also denied the claim, citing the same basic reasons mentioned above. In addition, the Organization was advised: "Neither by rule nor past practice may employees of the craft claim this work as being exclusively theirs. The Carrier has utilized employees from all crafts and classes plus non-agreement personnel to perform this function; we have also utilized outside vendors to perform this work." Moreover, the Manager of Labor Relations advised:

> "The craft may claim no exclusivity to the involved work nor does the Scope rule address the function as being work of the craft while finally the Claimant has not demonstrated any loss of earnings as a result of not changing the tire. Finally, with regard to past practice, we are confident that had the Machinists performed this function, a 2-A-4 claim would have been forthcoming in performing work not regularly comprehended in the assignment."

The denial concluded that if a violation had, in fact, transpired, any claim would be reduced to a de minimis violation for a 15-20 minute function.

The employee's did subsequently take the position that the Machinists craft has the exclusive rights to all repairs to cranes owned or leased by the Company, and the Carrier's claim that Machinists have no claim to the changing of tires refers only to the Class A garage vehicles and not cranes which are maintained by the Machinists craft.

The Carrier replied that the changing of a tire on company-owned or leased equipment is accomplished by various crafts and classes of employees in the performance of their duties.

Thereafter, the Carrier asserted that changing of a tire is of a "...minor nature not requiring any skills as contemplated in Paragraph (O) of Article III of the Scope Rule.

The on-property handling does contain a document from an employee of five years' duration who claims that he personally performed and has personal knowledge that machinists employed at the facility "...historically by practice and agreement, perform the work of changing flat tires on Pettibone Cranes, both owned and leased by Conrail."

The Carrier argued, on the property, that the Pettibone Crane is not a "truck" and, therefore, it questioned that Paragraph (O) of the exceptions to the Scope Rule is applicable. Moreover, since Carrier categorizes the Scope Rule as general in nature, it suggested to the Organization that it must show exclusive performance through custom, practice or tradition which, according to the Carrier, had not been demonstrated. The Carrier refers to a statement from a General Foreman that the past practice has been for a contractor, on a periodic basis, to replace tires and make repairs to the Pettibone Crane.

The Carrier disputed certain documents from 1986 and 1987, since none of them dealt with changing tires on the Pettibone Crane.

In its submission to the Board, the Organization has reiterated its contentions and stresses that portion of the Three R Act which prohibits the Carrier from taking work from one craft and giving it to another. However, in order to apply that Act, one must initially ascertain if, indeed, the work in question is reserved to the Organization.

In its submission, the Carrier stresses that the Organization's Scope Rule is general in nature and it fails to mention changing of tires. Thus, there is a necessity for the Organization to establish exclusivity in order to prevail.

This Board is inclined to agree with the Carrier that there has not been a showing of exclusive performance. The statement submitted by the Organization concerning performance of work in the past is not sufficient to show an exclusive performance under all circumstances as is required. Although the Organization states that it did not receive a contrary statement from a General Foreman, even if that is accurate, the Organization's proof falls short.

A W A R D

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Ill. this 26th day of January, 1995.