

Award No. 5525

Docket No. 5343

2-MP-FO-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Missouri Pacific Railroad Company violated the current agreement when then on November 16, 1965, it improperly transferred work, which was assigned to and performed by Laborers at the North Little Rock, Arkansas Shop, North Little Rock, Arkansas.

2. That accordingly, the Missouri Pacific Railroad Company compensate Laborers Robert Ivy, Jr., and W. E. Green for eight (8) hours at their applicable punitive rate of pay from the aforementioned date and until this practice has been stopped and Laborers are returned to their jobs. This is a continuous claim commencing November 16, 1965.

EMPLOYEES' STATEMENT OF FACTS: For many years the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, has maintained its Mechanical Department facilities at North Little Rock, Arkansas.

On November 16, 1965, seven (7) Laborers were employed and assigned to positions of operating chore boy and transporting material and supplies from the Storeroom to various locations, and to Mechanical Employees at the North Little Rock, Arkansas Shop.

Work hours for the Laborers were from 7 A.M. to 3 P.M., 3 P.M. to 11 P.M., 11 P.M. to 7 A.M. The positions were seven (7) days per week prior to September 1, 1949. On September 1, 1949 they all became regular five (5) days per week positions because of the September 1, 1949 Agreement. There were three (3) Laborers working from 7 A.M. to 3 P.M., one (1) Laborer working from 3 P.M. to 11 P.M., one (1) Laborer working from 11 P.M. to 7 A.M., and two (2) Laborers working as relief men. The seven (7) Laborers' duties consisted of picking up requisitions, having them filled at the storeroom, checking items requested, and transporting such items to

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 employe 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.

This dispute involves the issue as to whether or not the work in question is reserved exclusively to petitioners herein under the Scope Rule of the Agreement governing the parties to this dispute.

The undisputed facts are that at the company's mechanical department facilities at North Little Rock, Arkansas, laborer employes would present material and supply requisitions at the company's storeroom to be filled by store helpers and the material and supplies would then in turn be delivered by the laborer employes to mechanics or to a designated area. On December 3, 1965, Carrier abolished two laborer positions covering this work. Carrier installed an Electro-writer system whereby normally a foreman would write a requisition request on an Electro-writer and the store helper would then fill the order and deliver the requested material and supplies to mechanics or to a designated area.

The Organization's position is that the transfer of the work in question from the laborers to the store room helpers violates the Scope Rule of the Agreement; that by custom, historical practice and tradition the work here in question has been performed exclusively by laborers.

The Carrier's position is that there wasn't a "transfer" of work from the laborer employes to any other craft; that the Scope Rule of the Agreement does not grant to laborer employes exclusively the work here in question.

The Brotherhood of Railway Clerks filed a reply in this dispute, wherein it alleges that the work involved herein is subject to the scope and operations of the Clerks' Agreement.

Examination of the Scope Rule of the Agreement shows that it does not specifically define or describe the work of the petitioners under the Agreement. Conversely, it merely lists different classes of employes for whom hours of service and working conditions are governed by the Agreement. Therefore, inasmuch as the Scope Rule is a "general scope rule", the well-established principle of this Board is that the burden is on the Organization to prove by competent evidence that the type of work here in question has been exclusively reserved to the Laborers, system wide — historically, traditionally and customarily.

The record indicates that "exclusivity" has been shown regarding the work in question at this location, namely, North Little Rock, Arkansas. However, no proof was presented by petitioners indicating a system-wide showing of "exclusivity".

Therefore, inasmuch as the Scope Rule is lacking in specific language indicating an intent to assign the work in question exclusively to the laborer employes in addition to a void in the record establishing that such work has system wide by tradition, historical practice or custom been exclusively reserved to the petitioners herein, we are compelled to deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1968.