



Award No. 5700

Docket No. 5473

2-SCL-CM- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

- (a) That under the controlling Agreement, the Atlantic Coast Line Railroad violated Rules 27(a) and 402 when they assigned a Stores Department employee to operate ACL Crane 65447 in unloading fill sand from a railroad car on April 26, 28 and 29, 1966, Waycross Shop.
- (b) That accordingly the Atlantic Coast Line Railroad be ordered to pay Carman C. A. Varnadore, regular assigned crane operator,
(4) additional hours at pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: On April 26, 28 and 29, 1966 a Stores Department employee was assigned by the Carrier to operate A.C.L. Crane 65447 in unloading fill sand from a railroad car adjacent to the lumber storage shed and acetylene house, which, along with the planing mill, are located between the paint, coach, fabricating shops and car sheds which is almost in the center of the construction and car repairing area. In previous handling of similar violations occurring in the same area the question of departmental jurisdiction was used as an excuse for the violation by local management but was discredited by Mr. J. W. Hawthorne, Chief Mechanical Officer, and Mr. W. S. Baker, Assistant Vice-President.

Subsequent to the handling of two cases identical to the instant claim, agreement was reached between Mr. J. W. Hawthorne, Chief Mechanical Officer, and Mr. J. S. Head, former General Chairman, to the effect that the use of employees other than carmen to operate mechanically operated cranes, on rails in the area in question would be discontinued. This agreement was confirmed in writing on November 14, 1961 and has never been rescinded.

ACL Crane 65447 operates on rails and is a mechanically operated crane. The work in question is historically work of the Carmen's craft.

Carman C. A. Varnadore, hereinafter referred to as the Claimant, is employed by the Atlantic Coast Line Railroad, hereinafter referred to as the Carrier, as a crane operator at their Waycross, Georgia Shop.

compensated for his services on the dates in question, no employee has suffered damage, and the claim should accordingly be denied in its entirety.

The respondent Carrier reserves the right, if and when it is furnished ex parte petition filed by the petitioner in this case, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered herein.

(Exhibits not reproduced.)

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.

Petitioner contends that Carrier violated Rules 27(a) and 402 of the effective Agreement between the parties when a Stores Department employe was assigned to operate A. C. L. Crane 65447 on April 26, 28 and 29, 1966 for the purpose of unloading sand from a box car adjacent to Carrier's lumber storage shed and acetylene house at Carrier's yard in Waycross, Georgia. The disputed work was performed by a diesel crane assigned to the Stores Department in ground areas used for storage of materials. The sand was used to fill in low places adjacent to the sides of the buildings, which are assigned to the Stores Department as storage areas. Petitioner seeks compensation at the pro rata rate for the claimant, a regular assigned crane operator who was allegedly denied the disputed work.

Carrier urges that the disputed work was properly assigned to a Stores Department crane operator as historically members of two other crafts also operate cranes at this location as well as carmen and that the work of unloading sand and dirt in storage areas has never been considered carmen work.

The Brotherhood of Railway, Airline, and Steamship Clerks, Freight Handlers, Express and Station Employees, represents the employ of the Stores Department, who performed the disputed work. This organization was duly notified of the pendency of this case and afforded an opportunity to file a submission which is properly before us for consideration. The gravamen of the Clerks' position is that the disputed work is covered by the Scope Rule of the Agreement between the Carrier and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees. Furthermore, it is urged that for more than forty (40) years employes in the Stores Department at Waycross and throughout Carrier's system have maintained sheds, grounds and buildings for clean, safe and proper storage of materials.

Pursuant to the requirements set forth in a recent decision of the Supreme Court of the United States in such jurisdictional controversies, we have examined the contracts between the Carrier and both Unions repre-

senting different crafts, taking into consideration pertinent evidence as to usage, practice and custom. **Transportation-Communication Employees Union v. Union Pacific Railroad Company.** 385US157 (Dec. 5, 1966).

Petitioner avers that the specific work in dispute is expressly described in Rule 402 of the effective Agreement between the Carrier and Petitioner as follows: ". . . all steam and mechanically operated cranes on rails except overhead electric cranes; . . .", and that such work cannot be removed therefrom and assigned to others not subject to the terms of said Agreement despite contrary past practice. In this connection, Petitioner relies on earlier claims settled on the property to support the instant claim.

Analysis of the Scope Rules contained in the separate Agreements between Carrier and the Brotherhood of Railway, Airline and Steamship Clerks and the Brotherhood of Maintenance of Way Employees discloses that both scope rules are general in nature and merely list classes of employees subject to the provisions of said Agreements, including crane operators. However, the Brotherhood of Railway, Airline and Steamship Clerks avers that it has been the practice and custom of more than forty (40) years that Stores Department employees at such location to maintain the sheds, grounds and buildings under their jurisdiction and that the disputed work clearly is encompassed by consistent past practice.

The record reveals that Petitioner does not claim that other crafts cannot operate diesel cranes when performing work consistent with work encompassed by their respective Agreements, but merely urges that the work involved in this claim was shop maintenance work under the scope of the Mechanical Department Agreement. Moreover prior claims of a similar nature have been allowed by Carrier, whether or not presently considered erroneous by Carrier.

The particular work here involved as the unloading of fill sand with a mechanically operated crane on rails. It cannot be disputed that this was maintenance work as urged by Petitioner, which previously has been performed by carmen.

Regardless of previous practice, the language contained in Rule 402 of the effective Agreement between Petitioner and Carrier is clear and unequivocal. Even though Departmental jurisdiction exists as urged by Carrier, Petitioner here has sustained the burden of establishing that the disputed work comes within the purview of the Agreement, as such work can only be described as maintenance and repair of shop facilities through use of a mechanically operated crane on rails. As claimant was denied an opportunity to perform work to which he was contractually entitled, the claim will be sustained.

A W A R D

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1969.

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