

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
(  
( St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. This is a time claim and grievance in favor of Laborers, Cecil Murray and Jim Barnes. This claim covers 30 minutes of the regular eight hours of service on December 16, 1980, and eight hours on December 17, 18, 19, 22 and 23, 1980. On these dates, the rate of pay of a Hoisting Engineer is \$9.04, Hoisting Helper is \$8.41 and Laborer is \$8.29. For Mr. Murray, we are claiming the difference between the Hoisting Engineer and Hoisting Helper, which is \$0.63. Mr. Murray's part of the claim comes to a total of \$25.51. For Mr. Barnes, we are claiming the difference between Hoisting Helper and Laborer, which is \$0.12. Mr. Barnes' part of the claim comes to a total of \$4.86.
2. On December 16, 1980, American Hoist, SL-SF 99071, came to the Rail Yard of the Roadway Shop about 11:30 A.M. The hoist started working at 3:15 P.M., December 16, 1980, at the Rail Yard. The operator was Bill Adkins and the helper was T. Johansen. The hoist also worked all day on December 17, 18, 19, 22 and 23, 1980, with Mr. Adkins as the operator and Mr. Johansen as the helper. They switched cars around in the Rail Yard and unloaded rail.
3. This is in violation of the agreement between the St. Louis-San Francisco Railway Company and the International Brotherhood of Firemen and Oilers, effective July 1, 1979, particularly, Rules 1 and 2. There are only three hoists assigned and performing work at Springfield, Missouri, and they are all operated by members of our organization, and the helpers are also members of our organization. Mr. Adkins and Mr. Johansen are members of the Maintenance of Way. We cannot understand why the carrier has not placed members of our organization on this hoist to perform this work, by not doing so, the carrier has violated our agreement, as stated above, and for economic reasons, we would also like to point out to the carrier, that they are paying more money in wages to Mr. Adkins and Mr. Johansen, than what they would have to pay to Mr. Murray and Mr. Barnes.

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.

The Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On December 16, 1980, a locomotive crane (American Hoist, SL-SF 99071) was brought into the rail yard to unload new rail. It was operated by Maintenance of Way employees. This is a time claim for Claimants Cecil Murray and Jim Barnes for thirty minutes on December 16 and eight hours on December 17, 18, 19, 22, and 23, 1980.

The Organization contends these actions are a violation of the Agreement and particularly Rule 1, Scope, and Rule 2, Classification of Jobs, hereinafter set forth:

"Rule 1. Scope

(a) These rules govern the hours of service, working conditions, and rates of pay of the classes of employees listed in Rule 2 performing work in the Maintenance of Equipment Department, Roadway Shops, and Springfield Power Plant, and do not apply to employees of other departments of others performing similar work not coming under the jurisdiction of the shops shown in this paragraph.

(b) The work set forth above and in Rule 2 and all other work exclusively performed at a seniority point by employees of the Firemen and Oilers group shall not be reassigned to employees of other than the Fireman and Oilers group."

"Rule 2. Classification of Jobs

(a) Job classifications within each group are as follows:

Group A

1. Stationary Engineer
2. Oil Refiner
3. Hoisting Engineer (not including Wrecking Derrick Engineer)
4. Hoisting Helper"

The Organization asserts Rules 1 and 2 above unambiguously show that Hoisting Engineers and Helpers fall within its Scope rule, and such work shall not be assigned to employees other than the Fireman and Oilers group. The Organization further argues the Carrier is attempting to mislead the Board into believing there are several autonomous operations when, in fact, all operations are consolidated, and the facility has been, since 1975, an integral rail complex.

Notwithstanding the Organization's characterization of the Carrier's facility, this Board has closely examined the relied upon Scope and Classification rules in order to determine if the work in question exclusively belongs to the Organization as claimed. Our attention was particularly drawn to the language of Rule 1(a) dealing with the non-application "... to employees of other departments

or others performing similar work not coming under the jurisdiction of the shops shown in this paragraph." Clearly, this language envisions the performance of similar work being performed by employees not under the Organization's jurisdiction. The Carrier has argued that this language coupled with Rule 2 does not give the Organization the exclusive right to operate all of its hoists regardless of the work performed. This Board agrees with that viewpoint.

With respect to the work involved, undisputedly, it was the unloading of new rail which the Carrier has stated is the work of Maintenance of Way. The Organization has submitted several posting bulletins in support of its position that its work entails more than the scrapping of railroad cars. Nevertheless, the record contains no probative evidence which would show the unloading of new rails is normally performed by Organization employees or is, by Agreement, reserved to them.

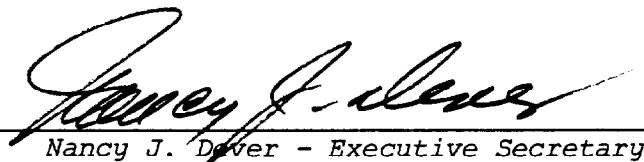
Having held that the operation of the Carrier's hoists are not exclusively reserved to the Organization, the Board finds that the character of work performed is the determinative factor. Herein, there is no substantial evidence to rebut the Carrier and Maintenance of Way assertions that this work of unloading new rails does not belong to the Organization, but rather to the Maintenance of Way. Therefore, under the reasoning set forth, we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1984.