

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(International Brotherhood of Firemen and Oilers
Parties to Dispute: (
(Camas Prairie Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Messrs. R. Cumming, R. A. Huffman and L. E. Lefler Jr., Laborers, Lewiston, Idaho, were deprived of employment as a result of the Carrier furloughing them and assigning their work to other crafts.

2. That, accordingly, the Carrier be ordered to compensate Messrs. Cumming, Huffman and Lefler for eight (8) hours pay at the pro rata rate for each Claimant, five days per week effective September 16, 1981 and continuing until settled.

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.

Carrier is a small 100-mile Railroad operating one (1) Shop at Lewiston, Idaho. While so engaged, Carrier owns no power motive equipment and only performs service on engines of other carriers. Claimants herein were assigned as Laborers at Carrier's Lewiston facility.

Prior to September 16, 1981, Carrier maintained a three (3) shift operation at Lewiston employing at least one (1) Laborer seven (7) days a week from 7 AM to 4 PM. According to the record, Claimant Cumming worked five (5) days per week from 7 AM to 4 PM; Claimant Lefler worked five (5) days per week from 7 PM to 4 AM; and Claimant Huffman worked Relief filling in on days off.

Claimants performed Laborers' work of fueling, sanding, servicing and cleaning locomotives, wiping engines, cleaning shops and lavatories, and performing trash removal.

On September 18, 1981, due to a general decline in business, Carrier abolished two (2) of its three (3) shifts at the Lewiston facility and furloughed Claimants and reassigned their remaining work to employees of other crafts.

On November 9, 1981, Organization's General Chairman filed a continuing Claim alleging that Carrier's abolishment of Claimants' positions and reassignment of their work duties violated Rule 1, Class B of the controlling Agreement which reads as follows:

"SCOPE"

RULE 1. These rules shall govern the hours of service and working conditions of the following classes of Mechanical Department employees carried on Mechanical Department payrolls.

* * *

Class B

Locomotive Department fire knockers, fire cleaners, fire builders, alemite operators, laborers, engine watchmen, engine wipers, hostler helpers, turntable operators, supplymen, shop watchmen, coal dock laborers and other Locomotive Department employees not covered in Class A.

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As per requirement in such a dispute, the Second Division of the National Railroad Adjustment Board notified all affected Third Parties of the pendency of this controversy; and all declined to participate without prejudice to the work performed by their respective crafts.

Organization argues that Carrier arbitrarily reassigned work which is reserved to Laborers by Rule 1 of the controlling Agreement as well as by past practice between the parties. Besides citing the aforestated contractual language, Organization further submits an affidavit signed by seven (7) long-term Lewiston employees from various crafts stating that Organization's members "... have exclusively, historically, and customarily been assigned laborers' work at the Camas Prairie Railroad Shop in Lewiston, Idaho ... (including) ... fueling, sanding, servicing, and cleaning of locomotives." Organization concludes that Carrier's improper assignment of work unjustly deprived Claimants of both employment and earnings. As remedy of this alleged violation, Organization requests that Claimants each be compensated "... for eight (8) hours pay at the pro rata rate..." for each day and continuing until settled.

Carrier contends that the Claim is meritless and should be dismissed.

In support of its basic position, Carrier challenges Organization's Claim as being vague and untenable; and further characterizes it as a baseless "shotgun approach" which is devoid of any underlying factual information which would enable this Board to resolve the instant Claim. Carrier also contends that Rule 1 - Scope Rule does not exclusively reserve the disputed work to members of the Laborers' craft.

Still yet further, Carrier also argues that Laborers' work at Carrier's Lewiston facility has been performed previously by independent contractors as well as by members of the Maintenance of Way, Boilermakers and Blacksmiths, Railway Clerks, and Machinists Organizations. According to Carrier, the pertinent facts in the instant case show that Claimants merely assisted Machinists in the performance of the disputed work rather than exclusively performing said work. Moreover, Carrier asserts that the decline in business justified abolishing not only Laborers' positions at the Lewiston Roundhouse, but also many of the Mechanics' positions which were aided by Claimants in the performance of their assigned duties.


The Board has carefully read, studied and considered the complete record in this case, and finds that Carrier has successfully rebutted Organization's exclusive claim to perform the disputed tasks. Organization's affidavit signed by seven (7) employees assigned to the Lewiston Roundhouse does not provide clear and convincing evidence of an exclusive systemwide claim to engine servicing and building cleaning when measured against Carrier's unrefuted assertions that other crafts have performed and continue to perform the same tasks on Carrier's property. For this reason, Organization's Claim must be denied in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April 1987.

Labor Members Dissent to Award 11243


(F&O vs. Camas Prairie Railroad)

(Referee Mikrut)

Scope Rules are not negotiated as meaningless additions to the total Agreement. Within a Scope Rule comes understood specific job duties that adhere to each classification listed within that Rule, whether or not those job duties are distinctively specified in writing. The Scope Rule in the instant dispute may not have enumerated various types or kinds of work but the building cleaning and engine servicing was work that by custom and practice belonged to the Firemen and Oilers employed at the Lewiston Roundhouse. The fact that Employees Exhibit E-2 is a written affidavit from seven long-term employees stating that the work in question has been historically and customarily assigned to Laborers sets out a prima facie case that this was work that belonged to the Laborers at this point of the Carrier. Some work had to be reserved to Laborers, engine wipers and hostler helpers included in Class B of the Scope Rule, otherwise the necessity and need for their classification within the contract would not exist.

The majority erroneously stated in the last paragraph that this organization claimed exclusive systemwide right to this work. The record is completely devoid of such intentions. Our dissent stems from the fact that at Lewiston Roundhouse in Lewiston, Idaho, work proven to belong to our craft by past practice and custom was unilaterally given over to another craft. This transfer of work violates the intent of the Scope Rule. When a Scope Rule is violated, an Agreement is violated.

When the majority allows Agreement violations, we must vigorously dissent.


D.A. Hampton
Labor Member

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