

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 11725  
Docket No. 11497-T  
89-2-87-2-173

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers  
(  
(Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current Agreement, the Denver and Rio Grande Western Railroad Company arbitrarily assigned Locomotive Supply duties to other Crafts at Roper Yard, Salt Lake City, Utah.

2. That, accordingly, the Denver and Rio Grande Western Railroad Company be ordered to compensate the following individuals for the following hours, at the pro rata rate, on the following dates:

Mr. D. Thomas, December 20, 26, 1986 - 4 hours each date  
January 9, 1987 - 8 hours

Mr. R. Mills - December 24, 1986 - 8 hours

Mr. T. Allen - December 26, 1986, January 10, 1987 -  
4 hours each date.

Mr. T. Falcone - January 3, 1987 - 4 hours.

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.

The Board noted that the International Association of Machinists was informed of the pendency of this dispute, and in a letter dated February 1, 1988 to the Board, they neither claimed nor disclaimed the work in question.

The Organization claimed that, since the furlough of locomotive supply laborers at the Salt Lake City, Utah-Roper yard, the Carrier had transferred those duties to those employed in the Machinists' craft. The Organization stated this is a violation of the Scope Rule, and that since they performed this work on a systemwide basis where the craft is employed, the Carrier does not have the right to transfer this work to those of another craft. The Organization noted that locomotive supply is not listed under any other craft's Scope Rule. The 1964 exception for outlying points does not apply to the Salt Lake City as it is one of the main points on the line. The Organization claimed that it has exclusively performed this work since prior to 1940 and that Rule 29 states that any laborer may perform this work. Therefore, the Carrier could have transferred these duties to others of the Firemen & Oilers craft who are employed at the point.

The Carrier stated that locomotive supply is a different classification from the other laborers that are still employed at their Salt Lake City facility. In any event the work is not exclusive to the Firemen & Oilers craft. The Carrier claimed that this work is performed by members of other crafts at other points in the system, and since that is the case, Rule 29 does not apply. The Carrier argued that the lack of business forced reductions, and there were no laborers on duty on the shifts on which the work was performed. The work claimed was of a very short duration, and since the Scope Rule merely lists positions and since the work has been performed by other than those of the laborers craft, the Organization has not met its burden of proving exclusivity.


Unlike Second Division Award 11606 wherein, in addition to the Scope Rule (which is the same as in this Docket), there was a letter and an Agreement between the parties placing the work in question solely within the laborers craft, the record of this case contains no such objective evidence. The Scope Rule is one of a class of Scope Rules that merely lists the job titles of the individuals involved. This has been held to be a general Scope Rule, and in many Awards it has been decided that the burden then is on the Organization to show systemwide exclusivity. The Organization went to great lengths to prove that the work belongs to them on an exclusive basis. The record clearly demonstrates exclusivity at points where the craft was employed. The record also shows, the points where the craft was not employed and where, presumably, this work was performed by other crafts constitute outlying points as defined in the September 25, 1964 National Agreement. Therefore, the Board finds the Organization has met its admittedly very difficult burden of proving systemwide exclusivity of the work in question, and since the Carrier had the option of assigning the work available to those employed in the craft, the Claim will be sustained for a 4 hour call out at the pro-rata rate on dates in the Claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1989.