Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11726
Docket No. 11519-T
89-2-88-2-6

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 the cleaning and supplying of locomotive cabs and cabooses to other Crafts at Grand Junction, Colorado.

2. That, accordingly, the Denver and Rio Grande Western Railroad Company be ordered to compensate Messrs. Meisenheimer, Eirwin, Audino and Duran for various hours on various dates as claimed, from September 30, 1986 to November 4, 1986, at the pro rata rate.

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 and Brotherhood of Railway Carmen were informed of the pendency of this dispute, and in letters dated April 11, 1988 and March 14, 1988 respectively to the Board, they neither claimed nor disclaimed the work in question.

The Organization claimed that, since the furlough of locomotive supply laborers and Car Yard Laborers at the Grand Junction Colorado facility, the Carrier had transferred those duties to those employed in the Machinists' and Carmen's 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 September 25, 1964 National Agreement exception for outlying points does not apply to Grand Junction as it is one of the main points on the line and the craft is employed. 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. In addition, caboose cleaning is covered under Supplement M. 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 and Car Yard Laborer are different classifications from the other laborers that are still employed at their Grand Junction 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.

With respect to the locomotive supply 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.

With respect to caboose cleaning Public Law Board 4136, Award #4, dated November 19, 1986 clearly sets out the responsibility of the parties when faced with the duties of cleaning and supplying caboose. The Letter of Agreement dated January 13, 1940 between the Carrier and the Organization, which has become part of Supplement M of the controlling Agreement, places this work under the exclusive jurisdiction of the Firemen & Oilers. The Organization is not contending that the furloughs were improper. There is no contention that enough work is available to support a full-time car yard laborer, and under the circumstances the Carrier would have been justified in transferring this work to others of the Firemen & Oilers craft who were at work on the property. The Carrier chose instead to give this work to the Carmen, and since it made that decision, it must be bound by that decision.

This is not a de minimis situation as claimed by the Carrier, and the Board finds the Claimants are proper in that the Carrier had the option of recalling the Claimants on a 4 hour call-out or giving the work to those employed in the craft. Therefore, the Board will order the claim sustained on a call out basis at the pro-rata rate for the 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.