

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

- (1) That the Water Softening Plant at Hoisington, Kansas should be operated by Maintenance of Way Employees;
- (2) That the necessary adjustments should be made in the seniority of any pumpers who may have suffered by the Carrier's improper action.

EMPLOYEES' STATEMENT OF FACTS: On or about February 19, 1947 the Carrier installed and put into service a Permutt Water Softening Plant at Hoisington, Kansas. This plant was for the purpose of softening the water to be used in the Diesel locomotive boilers. On the date this plant was put into operation, February 19, 1947, Water Service Repairman J. A. Bailey located at Hoisington, Kansas, was given specific instructions to the effect that it required at least 4 hours for the regenerating of this plant and that he was placed in charge of and responsible for this plant's operation. He was likewise instructed not to allow anyone else to operate this plant without specific instructions from the Division officials.

However, subsequent to that date the Carrier turned over to the Mechanical Department forces at Hoisington the operation of this Water Softening Plant. The Employees have contended that the operation of this plant should have been assigned to the Water Service Department employees, such as Pumpers, since work of this type has customarily been performed by this class of Maintenance of Way Employees.

The Carrier has denied our claim and has contended that Mechanical Department forces were properly assigned to the operation of this plant.

The Agreement in effect between the two parties to this dispute, dated July 1, 1938, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The Scope Rule of the effective Agreement states as follows:

- "(a) Bridge and Building Department:
Foremen
Assistant Foremen
Water Service Foremen, Assistant Foremen,

locomotives. Even agents, who are covered by the Telegraphers' Agreement, and shop employes and others, including some maintenance of way employes, add chemicals to water. The exclusive right to treat water is not now conferred upon maintenance of way employes by agreement or, for that matter, is not conferred upon any class of employe.

The treating of water at Hoisington, Kansas has not heretofore been performed by water service employes or pumpers. The water that was treated for steam locomotives was treated by employes of the Mechanical Department adding certain chemicals to the water.

The addition of chemicals to water for steam locomotives had for its purpose conditioning of the water which would go into the boilers of the locomotives where the water would then be heated for the purpose of generating steam. The water which is treated in the plant at Hoisington for diesel locomotives is water that goes into the steam generating plant on the diesel locomotive, therefore, there is no essential difference between the use made of the water after it is treated at Hoisington, Kansas now for diesels than what it was before, when it was treated for use in steam locomotives.

This claim is without merit and should be declined in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: On or about February 19, 1947, Carrier installed a water softening plant at Hoisington, Kansas. The operation of the plant was subsequently assigned to Mechanical Department forces. It is contended by the Organization that the operation of the plant is work which belongs to Water Service Department employes under the Maintenance of Way Agreement.

The water softening plant was erected for the purpose of treating water for use in diesel engines. It was the first such plant constructed on this railroad. There had previously existed at Hoisington a water treating plant to make water fit for use in steam locomotives. The operation of the latter plant had always been performed by Mechanical Department employes.

The scope rule of the Maintenance of Way Agreement describes positions and not the work to be performed. The work falling within the scope of the agreement is that which is historically and customarily performed by the occupants of the positions named. The Carrier here contends that the work connected with the operation of the plant was never the exclusive work of Water Service employes.

The scope rule of the Maintenance of Way Agreement includes the following positions, among others: "Water Service Foremen, Assistant Foremen, Repairmen, Helpers, Laborers and Pumpers". There is no position here listed which would of itself place the exclusive operation of a water softening plant under the scope of the Maintenance of Way Agreement. The Organization contends that the Carrier has placed the work under the Maintenance of Way Agreement and cites operating Rules 440, 444, 449, 456, 461 and 462 in support of this contention. Briefly summarized, these rules place the operation of treating plants under the supervisions of Water Service Foremen and makes pumpers and plant operators responsible for the operation of treating plants including the handling of chemicals used in the process. We realize that operating rules are unilateral in character and not contractual in their nature. They may, however, constitute evidence to be considered in determining conflicting questions of fact. They constitute competent evidence of the duties assigned positions named in the scope rule. We think these operating rules are some evidence in support of the Organization's contention that the operation of water treating plants belongs to water service employes.

The Carrier contends that water service employes have never been assigned the exclusive performance of the work of operating treating plants.

The evidence shows that water pumpers have never been used to perform this work at Hoisington. Nor does the record show any general practice of assigning such work to them exclusively elsewhere on this railroad. In addition to this, it is urged that the Organization through its General Chairman recognized that the work did not belong exclusively to pumpers. On March 4, 1947, the General Chairman wrote the Carrier in part as follows: "As this kind of a plant is not specified or mentioned in the scope of our agreement, I will appreciate it very much if you will advise if it is agreeable with the Management to place the repairing, maintenance and operation of this plant under the scope of the Maintenance of Way Agreement". The language used does not indicate that the work was not under the Maintenance of Way Agreement. The purport of the letter was to induce the Carrier to place the work under that Agreement. The Carrier refused to so place the operation of the plant. The letter appears to be an attempt to secure an agreement as to this work. The inference is that the Organization did not at that time consider the work to be exclusively covered by the Maintenance of Way Agreement and lends support to the Carrier's assertion that the work had never been assigned exclusively to water service employees.

The Organization's case is necessarily based on establishing that the operation of water treating plants is covered exclusively by the Maintenance of Way Agreement. We do not think the evidence is sufficient to sustain the claim. The listing of water service foremen and pumpers in the scope rule will not of itself sustain such a holding. The general practice has not been to give all such work to water service employees. At Hoisington, water service employees have never performed this work in the plant used to treat water for steam locomotives. The letter of the General Chairman under date of March 4, 1947, indicates that there had never been an exclusive assignment of the operation of these plants to water service employees. In the latter respect it differs from the facts upon which Award 4848 was based. After an examination of the whole record and the principles applicable thereto, we conclude that the operation of water treating plants is not the exclusive work of water service employees under the Agreement in force with this Carrier. A denial award is required.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 1, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of June, 1950.