

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**LeRoy A. Rader, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**LOS ANGELES UNION PASSENGER TERMINAL**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood, that:

(1) The Carrier violated the provisions of the effective agreement on or about October 1, 1951 and on dates subsequent thereto, when it assigned the work of cleaning sewers at the Los Angeles Union Passenger Terminal to a contractor whose employees hold no seniority under the effective agreement;

(2) Each of the Water Service employees holding seniority on the Los Angeles Division be allowed pay at their respective straight time rates, for an equal proportionate share of the total man-hours consumed by the contractor's forces in performing the work referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** On or about October 1, 1951, the Carrier deemed it necessary to have its sewers and pipe lines in the Los Angeles Union Passenger Terminal cleaned and although the Carrier possessed the necessary employees and tools to perform this cleaning work, it elected to contract the work to the Flexible Sewer Cleaning Division of the Flexible Sewer Rod Equipment Company.

The contractor's forces consisted of three men and a foreman, and they worked a total of eighteen days in performing the cleaning work.

Four days were consumed in cleaning that portion of the sewers under the court yards at the terminal, using the Contractor's Sewer Cleaning Machine.

It later developed that the Contractor's machine was too large for the sewers inside and under the buildings, consequently the remaining fourteen days' work was done manually, using ordinary water service tools, and was performed principally during overtime hours.

In conversation with the Contractor's forces, they admitted that their specialty was cleaning sewers and pipe lines for large industries such as Oil Refining Companies and Chemical Companies and that the Terminal was outside their normal line of work.

The machine used by the Contractor during the first four days is gasoline operated and with this machine the Contractor made a maximum "cut" of

The claim is ambiguous as it does not name the claimants for whom claim is made nor does it specify the dates involved in the claim.

Southern Pacific Los Angeles Division employees have no rights at the Terminal except as provided in agreement of April 13, 1939 (Exhibit 1).

As established in Paragraph 4 of Terminal's Statement of Facts, no assignment could be made to Southern Pacific employees pursuant to agreement of April 13, 1939 (Exhibit 1), and no Southern Pacific employees could have been adversely affected, unless more than six additional positions were established, and inasmuch as the work in dispute involved only four men for period of approximately eleven days, no Southern Pacific employees could have acquired the right to work in the Terminal during the period involved.

Stated otherwise, regardless of any other factor, the instant claim for pay in favor of each water service employee holding seniority on the Los Angeles Division of the Southern Pacific Company would still be without merit or basis because of the undeniable fact that no additional maintenance of way (water service) employees of the Southern Pacific would have stood for the work or have been adversely affected in view of the provisions of the agreement of April 13, 1939 (Exhibit 1), to which the petitioner is a party signatory. In the event there were any agreement requirement that the Terminal secure railroad forces to perform the work involved, which the Terminal denies, the additional force would undeniably have come from Union Pacific and Santa Fe forces, pursuant to agreement of April 13, 1939.

For the Board's information, copy of Southern Pacific Company (Pacific Lines), Los Angeles Division seniority roster of January 1, 1951, for Water Service Sub-department is attached as Carrier's Exhibit 3. Not only is it a fact that no employee on the Los Angeles Division could have been adversely affected by the subject of dispute, but any conceivable relationship between some of the employees such as caretakers and pumpers with the dispute is absolutely nil.

The carrier desires to reiterate that the instant claim covers work not spelled out or contemplated or covered by agreement provisions in evidence; that the work has been required but once in more than twelve years; that the Terminal does not possess the equipment to handle the work and has had use for the same but eleven days in more than twelve years; and that employees of the contractor specializing in the work possessed special skills not required or possessed by Terminal forces.

#### CONCLUSION

The Terminal asserts that it has conclusively established that the claim in this docket is without basis or merit, and therefore respectfully submits that it should be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This dispute arose when Carrier assigned work of cleaning sewer lines in the Los Angeles Passenger Terminal to a contractor not under the Agreement.

Petitioners cite the Scope Rule, Article 1:

"Scope—These rules govern working conditions and hours of service of employees in the Maintenance of Way Department (not including supervisory employees above the rank of foreman), such as:—

"(a) Foremen and assistant foremen of bridges, buildings, tunnel, painter, construction, concrete, mason, water supply, plumbing, paving, coal wharf, coal chute, fence gang and pile driver.

"(b) All mechanics, helpers and laborers coming under the supervision of the above foremen."

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and citing Awards 1314, 3955, 5747, 5872 and 4800. And Article 11—Seniority, and alleging employees thereunder were qualified to perform the work and Carrier owned the necessary equipment to perform the work. The record shows two photographs, Exhibits "A" and "B," the latter being th machine owned by Carrier which had been used in the past to perform the work when done by employees, and "A," the machine used by the Contractor's forces. Both machines used in cleaning sewers and that the only essential difference in the machines is that contractor's machine is operated by gasoline motor while Carrier's machine has an electric driven motor, and citing other awards, in particular, Award 4755.

Respondent Carrier takes the position that employees working in the Terminal are drawn from the forces of the three Carriers using the Terminal. The proportionate share is based on the number of cars handled for each Carrier, and such employees retain their employee relationship with, and seniority status on the parent line. Under such agreement, as of October 1, 1951, there were 47 employees of the Southern Pacific, Santa Fe and Union Pacific, working in the Terminal:

Southern Pacific	28 employees
Santa Fe	17 employees
Union Pacific	2 employees

Under agreed upon apportionment based on "using cars" in the preceding year, as set forth in agreement of April 13, 1939, employees of the three roads were subject to apportionment as follows:

Southern Pacific	22 employees
Santa Fe	19 employees
Union Pacific	6 employees

That from this tabulation six more positions were assigned to Southern Pacific than such employees were allocated pursuant to agreement and in the event additional positions were established at the Terminal, positions would be assignable to employees of Santa Fe and Union Pacific, and no assignment would be made to Southern Pacific Employees unless more than six additional positions were established.

It is contended that the Terminal did not possess the specialized power equipment necessary to restore waste lines to original inside diameter, nor did any of its employees have the experience and special skills required for the particular work involved. These various specialized skills and the service performed by the Pipe Cleaning Division of the Flexible Sewer Rod Equipment Company are cited to show the nature of the work done by Contractor's employees.

On behalf of Respondent it is further contended:

(1) This is a claim against the "Los Angeles Union Passenger Terminal" and not a claim against the Southern Pacific Railroad;

(2) That the "Los Angeles Union Passenger Terminal" is a separate and distinct Company, owned by three tenant lines. Therefore, the Terminal Company and the Southern Pacific are not one entity as treated by employees in this record. Cited is Award 5304 on the matter of special skills required which were not possessed by the Claimants therein and the claim therefore was denied.

In the record in this case one disputed matter relates to the machine owned by the Company which was previously used by employees to do the work in question, in that, it is contended, it was broken and therefore out of service at the time in question. We find no sufficient reason given relative to any effort made to repair the same and thereby must conclude that it could have been put in condition to do the required work.

On the question of ownership of the Terminal we find that the Southern Pacific Railroad assigned the work to the Contractor and apparently assumed responsibility for it.

In the matter of special skills and equipment, Carrier raising this defense carries the burden of establishing the fact and this it has failed to do so the record shows that employees have in the past performed like and similar work, with equipment owned by the Terminal Company. Therefore, we believe such defense is untenable under facts shown herein. Also, without going into detail, we feel that the Scope Rule covers the work in question and assignment of personnel to perform the same could have been worked out by conference between the parties. Such consultations or conferences were not held under the facts here presented.

The claim should be sustained.

**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 21, 1934;

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

That claims should be sustained in accordance with Opinion.

#### AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1954.