

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

UNITED STEELWORKERS OF AMERICA, CIO

THE LAKE TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: These claims are for eight (8) hours pay for Joseph Dario and Joseph Kure on account of two mechanics cleaning out Sand Car on March 28th, 1953, work which comes within the scope of the Maintenance-of-Way Department.

EMPLOYES' STATEMENT OF FACTS: On March 28th, 1953, the Company used two mechanics to clean out a sand car. This occurred on a Saturday. A Maintenance-of-Way laborer, working Monday through Friday has always done this work. On the Saturday in question many other laborers from the Maintenance-of-Way Dept. were available, but the Company chose to ignore their rights to this work. In addition to this, the Company is on record that in future hostlers will perform the work.

POSITION OF EMPLOYES: This case represents a definite violation of the scope of the Agreement as it concerns the Maintenance-of-Way Dept. The work in question has always been performed by laborers from the Maintenance-of-Way Dept. and the action taken by the Company represents complete indifference concerning the rights of these employees. Moreover, the threat, for that is what it amounts to, that hostlers will perform the work in future is hardly in accord with the Purpose for which the Agreement was drawn up.

The United Steelworkers of America, during the many years it has done business with this Company, has always except on one solitary occasion, lived up to the intent and purpose of the Agreement. The facts are before this Honorable Board, and we ask it if, in its opinion, the Lake Terminal Railroad is showing any respect for the Agreement.

The Purpose of the Agreement reads as follows:

"The purpose of this Agreement is to establish more extensive and more definite rules and regulations governing wages, hours of work and other conditions of employment, which should result in better cooperation among and benefits to the Parties herein." (underlining supplied)

We ask this Honorable Board to rule that the Company was in violation of the Agreement when it used mechanics on laborers work, and that it was also in violation of the Purpose of the Agreement when it said that hostlers would perform the work in future.

The Company has been furnished with all the above data.

CARRIER'S STATEMENT OF FACTS: At the time this claim arose the Carrier unloaded sand from open top cars with a crane. The sanding facilities are located near the Carrier's Diesel Shop and two mechanics from the shop were used for approximately one hour in pushing sand to the middle of the car for removal by the crane.

The current Schedule Agreement between the parties contains no Scope Rule. Article III, Section 11, provides:

"Section 11—An employee called to report for work in an emergency will be paid a minimum of four (4) hours at his regular rate; however, if the employee works two and one-half (2½) hours to four (4) hours, he shall receive pay for six (6) hours at his regular rate, and it is further provided that an employee who works more than four (4) hours shall be paid at the rate of one and one-half (1½) times the regular rate for actual time worked, and under this rule an employee's time will start when he is called, provided he reports within an hour thereafter. Employees who are called and report for emergency work will be required to do only such work as called for or other emergency work which may have developed after they were called and cannot be performed by the regular force in time to avoid a delay."

The current Schedule Agreement between this Carrier and the Brotherhood of Locomotive Firemen and Enginemen contains the following:

"Article 22—Hostlers and Hostler Helpers

"(b) The term 'Hostler' applies to employees who handle engines in enginehouse territory and between enginehouse and yards, perform engine watchman service, and do other work incident to the dispatchment of engines." (Emphasis supplied.)

"(q) At times when the service is such that hostlers and helpers are not continuously engaged in the movement and servicing of locomotives, during their tour of duty, they may be assigned to such other work around the enginehouse as they are able to perform, incident to the dispatchment of locomotives." (Emphasis supplied.)

POSITION OF CARRIER: In the absence of a Scope Rule defining the duties of the respective classes or crafts of employees represented by this Organization, and in view of the provisions of the current Schedule Agreement between this Carrier and the Brotherhood of Locomotive Firemen and Enginemen quoted above, the Carrier is of the opinion that the use of section men in the past to perform the service involved in these claims was improper. It cannot be disputed that the sanding of locomotives is generally recognized as hostlers work and therefore the placement of the sand in the sanding facilities for that purpose must be considered as "other work incident to the dispatchment of engines."

The fact that section men have in the past performed this service cannot give them the right to the service when it in reality belongs to another craft subject to another Schedule Agreement.

It is therefore respectfully submitted that these claims must be dismissed. It is hereby affirmed that all data submitted in support of the Carrier's position have been submitted in substance to the employees or their duly authorized representatives and made a part of the particular case in dispute.

OPINION OF BOARD: This Board finds that the claim as cited by Petitioner is not supported by the Agreement or other documentary evidence.

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1955.