

Award No. 10027

Docket No. MW-8551

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement on February 9, 1955, when it assigned other than water service forces to dig a ditch for the installation of a drain to the ice box at the passenger station, Concordia, Kansas;

(2) That Water Service Helper John McKinney be allowed fifteen (15) hours' straight-time pay account of deprived of the opportunity of performing the work referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant John McKinney is a regular assigned Water Service Repairman Helper who, prior to and following February 9, 1955, was furloughed by the Carrier account of reduction in forces.

Bridge and Building Department Water Service Foremen, in charge of the respective classes of employees assigned to their gang and which includes the classification of Water Service Repairman Helper, have charge of and are responsible for the safe, economical, and efficient operation of pumping and treating plants, and must know that employees who maintain and operate such plants, under their jurisdiction, are properly instructed, qualified to do the work assigned them, and are faithfully performing their respective duties. They shall have and be familiar with current rules, regulations, instructions and local laws governing their class of work.

They are also in charge of and responsible for the safe, economical and efficient installation, repairs and maintenance of:

(a) Water and diesel oil supply, pumping and treating plants including wells, tanks, water columns, and pumps. Steam, gasoline, distillate and gas engines or other power units used for operating pumps (except when power is furnished from a central power plant). All other facilities, appurtenances, and appliances used in the operation of such plants.

(b) Gasoline, gas, distillate, fuel, diesel, and other oil handling facilities.

(c) All pipe lines used for conveying water, oil, gas, steam and air.

The Agreement does not allocate this common labor to any particular class or group of employees; it may be done by water service helpers in some cases or even by water service mechanics when small jobs are involved. In circumstances where more than one group or craft of employees have traditionally and customarily performed a certain type of work it is not contracted exclusively to either of them. Sole right to perform this work does not rest with the water service helper under the provisions of the Scope rule of this Agreement. We think the Carrier's position is supported by the Opinions of Third Division Awards 5491 and 6053.

In Award 6053 we find the following:

"This claim to be allowed must be supported by rules of the Agreement. Neither the scope rule or the seniority rules cited grants the work in question exclusively to the Bridge and Building employees. This Board has decided this question many times starting with Award 615 down through 6007."

As to Sections (c) and (e) of Rule 440 of the Carrier's Rules and Regulations for Maintenance of Way and Structures it is the position of the Carrier that there is no support for the claim in these regulations. In the first place they are unilateral instructions of the Carrier which may be waived or rescinded at its discretion. In the second place they form no part of the wage and hours Agreement under which the claim was made. In the third place they do not apply to water service helpers. These instructions would not allocate this work exclusively to water service employees even if they were part of the Agreement. To make a water service foreman responsible for maintenance of pipe lines and water facilities would not prohibit use of section men to dig ditches for drains. There is nothing in the instructions that says only water service employees may be used on work for which a water service foreman is responsible. The water service foreman here involved says section men have always been used for labor of this kind in connection with maintenance in his charge.

There is no Agreement requirement or authority for the payment of this claim.

OPINION OF BOARD: On February 9, 1955, Carrier used two section laborers to dig a ditch in which to lay a drain from the ice box in the passenger station in Concordia, Kansas. This ditch was adjacent to the tracks and at one point passed under and terminated a few feet beyond the tracks. After the ditch had been dug, Water Service employees laid the drain and the track laborers filled in the ditch.

Claimant John McKinney, a regularly assigned Water Service Helper was on furlough at the time, due to a reduction in force. He filed the claim which is now before us, contending that under the Scope Rule of the parties' Agreement of August 1, 1950, he was entitled to the work of digging the ditch.

The Scope Rule sets up two groups, as follows:

- "(a) Bridge and Building Department:
- Foreman
- Assistant Foremen
- Motor Car Operators in B & D Gange
- Water Service Foremen, Assistant
- Foremen, Repairmen, Helpers,
- Laborers and Pumpers
- Motor Car Repairmen and Helpers

**Mechanics (carpenters and painters)
Helpers and Laborers**

- (b) Roadway Track Department:
Section and Extra Gang Foremen
Assistant Section and Extra Gang
Foremen
Section and Extra Gang Laborers"

Since the seniority rights of the two departments are not interchangeable, the Organization contends that the work here in question is reserved exclusively to the Water Service employees in the B & B Department.

However, we note from the record that Water Service Foreman W. D. Johnston, in commenting on this claim, and another of the same nature filed on behalf of the named Claimant, had the following to say:

"Falls City, Neb., June 22, 1955

File 949-3-35
cc 949-3-34

"Mr. C. B. Huffman:

"Reference to Mr. C. L. Lambert's letters of May 20, 1955 to Mr. Thos. E. Fox, Superintendent at Falls City for time claims by John J. McKinney for using section men 40 hours on March 15th and 16th at Concordia, Kansas.

"This work was excavating through roadway, and section men have always helped water service B&B gangs as long as I can remember for years, as extra labor was needed.

"Excavating is labor and does not require special pipe tools or Water Service Helper assistance, as the Water Service Repairman did all of the pipe work, and the section laborer did only excavating and back filling ditch.

"Mr. McKinney has worked many a time and knows that section labor has been used in past years to perform such work, and that Water Service Repairman called section men to do the excavating while he installed the pipe, therefore I cannot see that Mr. McKinney's claim for the time involved violated any contract or rule of MofW agreement.

"Rule 440 (c) and (e) cover Water Service Foreman and does not in any way give Mr. McKinney any justified claim for Water Service Helper time to do labor work.

"The above will also apply to 15 hours time claim on February 9th, 1955 by Mr. John J. McKinney for using section men to dig ditch for drain to ice box at Passenger Station at Concordia, Kansas.

W. D. Johnston"

This statement of past practice on this Carriers' property has not been disproved. This Board has held many times that work reserved to the employees is that which has been traditionally and customarily performed by them. Award 9001. Based upon the record presented in this case, we do not

feel that Claimant has shown that the work performed was work that belonged exclusively to Water Service employes, since it has been repeatedly performed in the past by laborers from the Roadway Track Department. See Awards 6007 and 7387.

The Scope Rule in the Agreement before us is general in character. It does not define the work to be performed by each group. Nor does it reserve to the Water Service employes the exclusive right to dig the ditches where drains are to be laid in the area of the tracks or elsewhere. Awards 6269 and 8387.

Claimant has failed to sustain the burden of proof that the Agreement has been violated.

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 Employee involved in this dispute are respectively Carrier and Employee 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of August, 1961.