

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**SOUTHERN PACIFIC RAILROAD COMPANY
(PACIFIC LINES)**

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

(1) The Carrier violated the effective Agreement on January 13, 14, 17, 18, 19, 25, 27 and 28, 1955 and on March 3 and 4, 1955, when it assigned employes outside the scope of the effective Maintenance of Way and Structures Department Agreement to perform the work of painting longitudinal lines on floors of shop buildings at Sacramento, California;

(2) Painters Harry W. Alexander and Paul A. Stewart each be allowed eight (8) hours pay, at their respective straight time rate, on each of the above specified dates, account of the violation referred to in part one (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: For many, many years prior to 1955, Foreman W. E. Darby, assigned to Bridge and Building gang No. 4, Sacramento, California, and the Painters and Helpers of his gang, painted the floors and longitudinal lines thereon, in the General Shops at that point. Maintenance of Way Bridge and Building Sub-Department Mechanics and their Helpers performed the excavation work necessary, built concrete forms, poured concrete and finished the concrete floors in the General Shops at Sacramento, California, while Bridge and Building Sub-Department Painters and Painter Helpers, applied the paint to the floors and likewise painted longitudinal lines thereon.

Beginning on January 13, 1955, and on January 14, 17, 18, 19, 25, 27 and 28, as well as on March 3 and 4, 1955, the Carrier assigned Motive Power and Car Department employes, who hold no seniority rights under the effective Maintenance of Way and Structures Department Agreement, to paint additional longitudinal lines and to re-paint or re-touch longitudinal lines

ment, the carrier submits that within the meaning of the Railway Labor Act the instant claim involves request for change in agreement, which is beyond the purview of this Board. It is a well established principle that it is not the function of this Board to modify an existing rule or supply a new rule when none exists. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

CONCLUSION

Carrier asserts it has conclusively shown that the claim in this docket is entirely without merit and lacks agreement or other support, therefore, requests that said claim, if not dismissed, 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. The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The question presented is whether the Carrier violated the scope rule of the Maintenance of Way and Structures Department Agreement when it assigned employees outside the scope of the Agreement to paint longitudinal lines on floors of shop buildings at Sacramento, California.

The Organization maintains that by tradition and practice they have long painted these longitudinal lines and when the Carrier assigned this work to Motive Power and Car Department employees on the dates named, they violated the Agreement.

In support of their contention that the work in dispute belongs to the Organization they quote letters in their initial submission from the Division Chairman, Bakersfield, California, that the disputed work has been done by the Organization; from the Division Chairman, Shasta Division, California, that it has been the practice in that Division for the Organization to do the work; a letter from the Division Chairman, Sacramento, California that the disputed work has always been assigned to the Organization.

The Carrier maintains that since the scope rule is general in character the right of the claimants to the work asserted depends on tradition, historical practice and custom and on that issue the burden of proof rests on the employees. The Carrier further maintains that in handling the dispute on the property the Organization presented no evidence that the painting of the lines in dispute was the exclusive work of the Organization. Carrier also asserted that for many years the Motive Power and Car Department employees, have done the work here complained of.

The Organization submitted at the oral argument before this Board certain statements of employees that the Organization did the disputed work in question. At the oral argument the Carrier also presented some 34 statements of employees that the work in question had been done by Motive Power

and Car Department employees. Neither party has objected to the consideration of this evidence.

Here we have a scope rule that is general in character and does not specify the functions contained therein. Under such a general rule most of the decisions of the Board hold that the question whether exclusive jurisdiction is conferred depends on tradition, historical practice and custom.

Viewing the record as a whole it is the opinion of the Board that the evidence does not show that the work claimed by the Organization was exclusively done by its members.

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 the Agreement was not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1962.