

Award No. 10540

Docket No. MW-9548

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated and continues to violate the effective Agreement when it assigned other than Maintenance of Way Track Department employees to perform the work of repairing frogs, switch points and various other track equipment at Memphis, Tennessee;

(2) The Carrier now be required to immediately restore the work referred to in part one (1) of this claim to its Maintenance of Way Track Department Employees.

POSITION OF EMPLOYES: The Scope Rule provides:

"SCOPE

This schedule governs hours of service and working conditions of all employees in the Maintenance of Way and Structures Department, except:

- (a) Signal Department employees.
- (b) **Clerical forces.**
- (c) Engineering forces.
- (d) Scale Department employees.
- (e) Water Works Foremen, repair men and helpers.
- (f) Telephone and Telegraph Maintenance employees.
- (g) Bridge Inspectors assigned to more than one division.
- (h) Supervisory forces above the rank of foremen.
- (i) Teams and drivers, owners of teams, or men placed in charge of teams by owners.
- (j) Any other employees (pending final decision) over whom there is jurisdictional dispute.

indicating such an intent. Nor is the fact that work at one point is assigned to one craft for a long period of time of controlling importance when it appears that such work was assigned to different crafts at different points within the scope of the agreement. We conclude that the work here in question was not the exclusive work of Clerks on this Carrier. It was not a violation of the agreement to require Machinist Helpers to continue to do the work while the treating plant was being rehabilitated for service after the fire. Controlling awards sustaining this view are: Awards 4827, 4889, 5702, 6409, Third Division. Award 1626, Second Division."

Second Division Award 1626:

"Where work may properly be assigned to two or more crafts, an assignment to one does not have the effect of rewriting the agreement. The work is necessary to be performed by some employe or employes entitled to perform it and an assignment to one group does not make it exclusively theirs unless there be a plain intention manifested to do so."

Second Division Award 2198:

"The fact that carmen may have, in some instances, performed the work is not conclusively controlling when it does not appear that there has been a practice under which they have been doing it exclusively. See Award 1110 of this Division."

Under their agreement the Maintenance of Way Employes have a right to repair track materials under the jurisdiction of the Maintenance of Way Department. This is the general custom prevailing on this property. There has been no change in the assignment of this work.

There is no basis for this claim and for reasons stated it should be dismissed or denied.

All data in this submission have been presented to the Employes and made a part of the question in dispute.

OPINION OF BOARD: It is alleged that the Carrier violated the Maintenance of Way Agreement by permitting store department welders at Memphis repair certain relieved track equipment, i.e., switch points, rails, frogs, etc.

The construction of the new concrete subway for the Crump Boulevard in Memphis required the Carrier to make extensive and broad relocations of its yard facilities at Memphis.

This construction required the installation of heavier rails, and resulting therefrom a substantial amount of relieved material in the nature of frogs, switch points, rails and other allied materials were acquired. All of the relieved material was far in excess of the amount required for the Memphis yards.

The alleged violation of the Agreement occurred in July 1954.

The Scope Rule in the Agreement merely lists the positions and it was executed by the respective parties in 1934. At said time, the Carrier had a Stores Department in existence since 1910 responsible for distributing the

materials in issue and what materials should be relieved and then scrapped or repaired.

The past awards of this Board are numerous in setting forth the principle that in situations where the claimants allege an exclusive right to perform certain and particular work, then they must corroborate said fact by a preponderance of evidence, or in other words they must assume the burden of proof.

The historical background in the instant case indicates that the work involved was not the exclusive work of the Organization.

Further, the materials in dispute were excess materials and relieved materials; they were not of the same weight. Their identity with respect to their original purpose had changed after their removal from the Memphis Yard, these relieved materials were properly under the jurisdiction of the Stores Department for repair, scrapping or further distribution. The Agreement was not violated.

Claim denied.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 25th day of April 1962.