

Award No. 10860
Docket No. MW-9879

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement beginning with January 4, 1954, when it assigned the work of icing, salting and heating refrigerator cars at Estherville, Iowa to other than its Track Department employees at that location.

(2) Section Foreman E. E. March and Sectionmen James Hansen, Glen Dahna and Glen Fisher each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by other employees in performing the work referred to in part (1) of this claim since January 4, 1954.

EMPLOYEES' STATEMENT OF FACTS: On this property, the work of icing, salting and heating refrigerator cars at Estherville, Iowa has, since before 1916, been assigned to and performed exclusively by the Carrier's Track Department (Section) employees at that location.

Nonetheless, under date of December 31, 1953, instructions were issued by the Carrier that effective Monday, January 4, 1954, the aforementioned work would be taken over and thereafter performed by its clerical employees, who hold no seniority rights under the provisions of this Agreement.

Consequently, under date of April 1, 1954 the undersigned General Chairman submitted a claim in connection therewith as follows:

"April 1, 1954
File: 2-0-144

Mr. H. T. Kelso, Roadmaster
Chicago Rock Island & Pacific R.R. Co.
Estherville, Iowa

work entirely foreign from track construction or maintenance work. It is, therefore, our position that the work in question is not covered by the Maintenance of Way Agreement.

Because the Clerks' Organization has rights under their contract which may be affected by a decision in this case, they should be given due notice of this hearing as required by Section 3, First (j) of the Railway Labor Act, which provides:

"Parties may be heard, either in person, by counsel or by other representatives, as they may respectfully elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the Carrier or Carriers in any dispute submitted to them."

Until such a notice is given the Clerks' Organization, this dispute is improperly before your Board.

We respectfully refer your Board to General Chairman Cope's letter of June 17, 1954 (Carrier's Exhibit "D"), particularly the second to last paragraph.

For the above reasons, we respectfully request your Honorable Board to deny the claim of the employees.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives and by this reference is made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 31, 1953 the Carrier issued instructions that beginning January 4, 1954, work of icing, salting and heating refrigerator cars at Estherville, Iowa will be assigned to other than Track Department Employees.

POSITION OF THE ORGANIZATION

That for a period of more than thirty years Track Department Employees have performed icing, salting and heating refrigerator cars at Estherville, Iowa and that it has been generally established by Board rulings that a long established and recognized practice as herein would prevent any transfer of work.

That Claimants have established and hold seniority in their respective class and groups and that the clerks to whom this work has been assigned hold no seniority rights under provisions of this Agreement.

Relevant portions of the seniority rule under this Agreement is as follows:

"RULE 2 (c)

"Scope of Roster. Seniority rosters will show the name and date of entry of the employees into the service of these railways and date of promotion by classes, and will be separately compiled for each group by seniority districts."

POSITION OF CARRIER

That this is a jurisdictional dispute. Quoting from the Record page 17 to wit.

"Under date of November 19, 1947, the Carrier received a request from the General Chairman of the Clerks' Organization that the icing of cars at Estherville, Iowa be turned over to employees coming under the Clerks' Agreement and that the Carrier establish a Refrigerator Inspector and laborer positions to take care of this work.

"This claim was discussed in conference at various times from 1947 to 1953 with General Chairman Petersen of the Clerks' Organization and in conference on January 20, 1953, the parties agreed to settle the matter by establishing two Class 3 trucker positions who would be assigned the duties of icing cars and any other refrigerator work necessary. (See Carrier's Exhibit "A")"

That Section men are laborers working under the direction of Section Foremen or Yard Foremen who under Rule 2, Section 6 have charge of the construction or maintenance of railroad track that they cannot be Employees entitled by contract to the working of icing, salting or heating refrigerator cars — work entirely foreign from track construction or maintenance.

That the Employees admit in the second to last paragraph of their letter of June 4, 1954 (Carrier's Exhibit "D") that the work involved here is "work of other Organizations" but they refuse to relinquish it because it was previously assigned and "until you are willing to return the Maintenance of Way work being performed by the other crafts". This letter referred to above dated June 17, 1954 sent to Mr. G. E. Mallery, Manager of Personnel was signed by Jay W. Cope, General Chairman of the Brotherhood of Maintenance of Way Employees, and reads in part as follows:

"... our organization will insist on the same consideration you give to other Organizations and **we refuse to voluntarily relinquish the work of other Organizations** previously assigned to the Maintenance of Way employees until you are willing to return the Maintenance of Way work being performed by the other crafts to employees within the scope of the Maintenance of Way Agreement. (Emphasis Added)"

OPINION

The Scope Rules under the binding Agreement in this dispute are in the opinion of this Board specific in that it lists the work covered. It guarantees to the Employees no rights to perform work other than specifically covered in the Agreement, regardless of local practice. It is not alleged or claimed by the Organization that work involved in this dispute is performed by the Organization to the exclusion of other classes of Employees covered by other Agreements.

There is as a matter of fact on record a letter by the General Chairman of the Maintenance of Way Employees dated June 17, 1954 (Carrier's Exhibit "D") that the work under dispute is "work of other Organizations".

It is true that Track Department Employees at Estherville, Iowa have in fact performed work of icing, salting and heating refrigerator cars for a very long time. We hold, however, in the instant dispute with Award 7954 which in part stated:

"... The argument is that the past practice at Mobridge, continuing as it did over many years, had the effect of making such work 'related work' under the scope rule at that point. While the Board has in many cases in which it has held a scope rule to be ambiguous, decided the question of whether certain work falls under the scope rule on the basis of past practice alone, we do not think such decisions are applicable to the present case. The scope rule involved here undertakes to describe the work covered and thus is less ambiguous than those scope rules which merely recite positions and leave the work done by such positions to be discovered through a study of past custom and practice."

A pertinent position was taken in Award 7031 and with which we concur, it reads in part as follows:

"... Where work may properly be assigned to two or more crafts, an assignment to one does not have the effect of making it the exclusive work of that craft in the absence of a plain language 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."

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of October 1962.