

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Levi M. Hall, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY**

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

(1) The Carrier violated the effective agreement when, on August 13, 1956 and on days subsequent thereto, it assigned other than its Track Department employees to perform the work of cleaning tracks Nos. 1, 2, 3 and 4 in its Bethlehem Engine Terminal, Allentown, Pennsylvania.

(2) Each of the employees of the Allentown Area track gang be allowed pay at their respective straight time rates for an equal proportionate share of the total man hours consumed by the other employees in performing the work referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** On August 13, 1956 and on days subsequent thereto, the work of cleaning tracks Nos. 1, 2, 3 and 4 in the Bethlehem Engine Terminal, Allentown, Pennsylvania, was assigned to and performed by Motive Power Department employees who hold no seniority rights under the provisions of this agreement.

The work consisted of loading the sand and dirt which had accumulated in and around the above-mentioned tracks, on to push cars and transporting to the west end of the terminal where the sand and dirt were unloaded.

The work of maintaining or repairing the Carrier's tracks, which includes the cleaning thereof, is work of the character that has heretofore been usually and traditionally performed by the Carrier's Track Department employees.

The Claimants, who were regularly employed on the Allentown Area track gang, were available and could have efficiently and expediently performed the above-referred to track cleaning work, had the Carrier so desired.

The agreement violation was protested and a suitable claim filed in behalf of the Claimants.

It will be noted that Mr. Fatzinger admits writing to the Maintenance of Way Employees' organization regarding the work involved in this case, because the employees he represents were complaining about the abolishment of one position which threw the burden of this man's work on to the remaining MP&RE Department force. Further Mr. Fatzinger, in direct contradiction to the Employees' contention that his people **never** participated in the work, states that roundhouse employees **always** did some cleaning of the tracks " \* \* \* even back in the steam days \* \* \*" and it was his opinion that they be allowed to **continue** to perform the work.

In support of their position, the Employees make reference to Rules 1 (Scope), 2 (Seniority), 3 (Limits) and 15 (Bulletins) of the agreement which allegedly makes it incumbent upon the Carrier to assign this work to their employees. Prior to the submission of the instant claim, the Employees have never contested the Carrier's right to assign this type of work to various classes of employees not coming under the scope of their agreement.

At our Elizabeth, N.J. Shops and at our Communipaw and Ashley Engine Terminals, this work has traditionally and historically been performed by MP&RE laborers and the Brotherhood of Maintenance of Way Employees has, likewise, never regarded this as an infringement upon the rights of their employees. Whenever the occasion warranted supplementing the laborer force by trackmen account of over-accumulation of debris, they were asked to assist the laborers.

Inasmuch as this work within the confines of the engine terminals has been performed by MP&RE Department laborers represented by the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers for many years without protest, this claim is lacking merit and should be denied in its entirety.

**OPINION OF BOARD:** It is the contention of the Petitioner that on August 13, 1956, and on days subsequent thereto, the work of cleaning tracks in the Bethlehem Engine Terminal, Allentown, Pennsylvania, was assigned to and performed by Motive Power Department employees who held no seniority rights under the Agreement effective June 1st, 1941; that the work consisted of loading the sand and dirt which had accumulated in and around the tracks onto push cars and then transporting them to the west end of the terminal where they were unloaded; that the work of maintaining or repairing the Carrier's track, including the cleaning thereof, had been usually and traditionally performed by Track Department employees; that the Claimants were available and could have performed the work and Carrier has violated the Agreement.

The Carrier's position is that the work in question involved the cleaning up of facilities within the confines of the engine terminal which was not the work of Maintenance of Way employees but was the work of the Motive Power Department and had been performed in the past by Shop Craft employees; that the work involved here does not include the cleaning of yard tracks to which the Maintenance of Way employees are entitled but is that of **cleaning debris and waste from tracks within the confines of the engine terminal** which has been usually and traditionally performed by Motive Power employees.

A dismissal of the claim is urged by the Carrier, maintaining the Claimants are unnamed, but, as this objection was not raised on the property, it will not be considered here.

The Scope Rule involved in the instant controversy is, as follows:

**"RULE 1**

**SCOPE**

"The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employes in any and all subdepartments of the M. of W. and Structures Dept., represented by the Brotherhood of Maintenance of Way Employes, and such employes shall perform all work in the M. of W. & Structures Dept."

In the absence of a specification of the classes of work reserved in a Scope Rule, it has, generally, been held that the rule reserves to the craft all work usually and traditionally performed by the class of employes named in the Agreement.

Petitioner, consequently, has the burden of proving that the type of work in question has been exclusively reserved to the Track Department of the Maintenance of Way employes under the present Agreement.

In support of its position Petitioner submitted letters of five employes from the Track Department. These letters cannot be considered by this Board as they were not presented to the Carrier nor did the Carrier have any knowledge of them until after the ex parte submission of the claim and an objection to their consideration was raised by the Carrier. A letter by the Local Chairman of the Fireman and Oilers was presented by the Petitioner in support of its position, also, but, subsequently in a later letter he completely contradicted his earlier statement.

Consequently, beyond a mere assertion that this work was usually and traditionally performed by Track Department employes, the Petitioner has little to support its position, has failed to sustain the burden of proving its contention and we cannot sustain the claim.

**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 Employes involved in this dispute are respectively Carrier and Employes 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 there has been no violation of the Agreement.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of THIRD DIVISION

**ATTEST:** S. H. Schulty  
Executive Secretary

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