

Award No. 11453

Docket No. CL-11136

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when it assigned the work of fueling Diesel locomotives, previously assigned to the Stores Department employees fully covered by the Clerks' Agreement, to employees covered by other agreements or by no agreement.

(b) Employees named in the claims as filed, their substitutes and/or successors, and all other employees covered by the Agreement who have been or may be adversely affected by the Carrier's action as set forth in Part (a) hereof, shall be compensated for all loss sustained as a result of Carrier's action. The claim is to continue until the work of fueling Diesel locomotives is returned to Stores Department employees and all claimants are properly compensated.

EMPLOYES' STATEMENT OF FACTS:

1. Sometime during the year 1939, the Carrier acquired and began the operation of locomotives powered by motors burning fuel oil. The duty of purchasing, unloading, and storing such oil and issuing it directly to the tanks of the Diesel locomotives was assigned to employees of the Carrier's Stores Department.

2. At Chattanooga, Tennessee, effective March 3, 1958, the work of fueling Diesels was taken from employees of the Stores Department, covered by the Agreement between the Parties, and assigned to employees not covered by the Agreement. Claim was duly filed under date of March 15, 1958, and the claimants were properly identified. A copy of the Local Chairman's letter filing such claim is attached hereto and identified as Employees' Exhibit "A".

3. Effective Monday, March 3, 1958, the work of fueling Diesel locomotives was taken away from Stores Department employees, covered by the Agreement, and assigned to employees not covered by the Agreement, at Pegram Shops and Terminal Station, Atlanta, Georgia. Claim was filed under date of April 26, 1958, and the claimants were properly identified and designated. A copy

on or about March 1, 1958, in accordance with Rule 20 of the effective agreement, and the fueling was made a part of the routine servicing of Diesel locomotives by Mechanical Department employees on the engine servicing platforms.

A truck driver (storehouseman) continues to operate the fuel oil truck on each shift in the fueling of yard Diesel engines at various locations within the Atlanta switching district.

BIRMINGHAM, ALA. AND CHATTANOOGA, TENN.

The conditions existing on the engine servicing platforms at Norris Yard, Birmingham, and at Citico Yard, Chattanooga, Tenn., were identical with those existing at Inman Yard, Atlanta, as above described. The fueling from stationary facilities at Norris Yard and Citico Yard was also made a part of the routine servicing of Diesels by Mechanical Department employees on or about March 1, 1958. Also, truck drivers (storehousemen) continue to operate the fuel oil truck in the fueling of yard Diesel engines in the Birmingham and Chattanooga switching districts.

In the handling of these particular claims on the property, the employee representatives contended that the fueling of Diesel locomotives constituted "issuing of storehouse material." Diesel fuel oil is not issued and it is not storehouse material. Moreover, no record is kept or made of the amount of fuel oil taken by Diesel locomotives at the servicing platforms, any more than a record is kept of the water taken. Regardless of the amount of fuel oil and water that may be in the tanks of the Diesels when they arrive at the servicing station, the fuel and water tanks are filled as a routine part of the servicing.

Awards of the Third Division dealing with this subject do not support the claim in this dispute. Carrier respectfully cites the decisions of the Board in Third Division Awards 7310, 7245, 5702, 5314, and 4978. In numerous other decisions, the Board has consistently held that its authority and function under the Railway Labor Act is to interpret the rules of the agreements in effect between the parties to disputes, not to make rules for the parties or to change or alter the existing rules.

From the evidence of record, it is clear that the agreement was not violated as alleged, and that the claim should be denied in its entirety.

All pertinent facts and data used by the carrier in this case have been made known to the employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the fueling of Diesel locomotives.

The Organization relies primarily upon Rule 1 — Scope and Rule 2 — Definition of Each Group of Employees as Covered by Respective Sections of Scope Rules — in support of the claim.

The rules relied upon were effective October 1, 1938. The parties are in agreement that at the time the rules relied upon were agreed to there were no Diesel locomotives in the service of the Carrier. Therefore, it cannot be said

that the work of fueling Diesels was contemplated by the existing Agreement. (Awards 7299, 8070, 8127, 10687.)

The record also shows that since Diesel locomotives have been placed in service by the Carrier the Organization has attempted to negotiate rules to specifically cover the work here claimed.

Based upon the entire record, the Board finds that the Organization has failed to prove that the work in dispute was reserved to the employees covered by the confronting Agreement. The claim will, therefore, be 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 27th day of May 1963.