

Award No. 11618

Docket No. MW-10401

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

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

(1) The Carrier violated the Agreement on December 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 26, 27, 28 and 31, 1956 and on January 2, 3, 4, 7, 10, 11, 16, 17, 18, 21, and 22, 1957 when it assigned section laborers to perform water service helpers' work and failed and refused to compensate them at the water service helpers' rate for such service.

(2) The Carrier now be required to allow pay for each of such section laborers the difference between what they received at the section laborer's rate and what they should have received at the water service helpers' rate, payment to be made as follows:

(a) Section Laborers Florencia Mota and Jesus Javier for each and every date set forth in Part (1) of this claim.

(b) Section Laborer Carlos Cabrera for each and every date set forth in Part (1) of this claim except for the dates of December 19, 1956 and of January 16, 17, 18, 21, and 22, 1957.

(c) Section Laborer Richard Reynosa for each and every date set forth in Part (1) of this claim except for the dates of December 5, 11, 12, 13, 14 and 24, 1956 and of January 7, 10, 11, 16, 17, 18, 21 and 22, 1957.

(3) The Carrier further violated the Agreement on January 18 and 21, 1957 when it assigned Water Service Mechanic William Lusch to operate Utility Tractor SPO-121 to backfill trenches, instead of using Utility Tractor Operator Jacob Michael.

(4) Utility Tractor Operator Jacob Michael now be allowed sixteen (16) hours' straight time pay because of the violation referred to in Part (3) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On the dates set forth in Part (1) of the Statement of Claim, the Carrier assigned one or more of the Claim-

"Utility Tractors on the Western Division are assigned to the Track Sub-department and operated by employees holding seniority in the class of Utility Tractor Operator in the Track Sub-department. To permit other than Track Sub-department employees to operate the Utility Tractor serves to nullify seniority of Track Sub-department employees; therefore, we request that Mr. Michael be paid additional compensation as outlined in our Statement of Claim, and as provided in the Agreement, particularly Rule 4."

The fallacy of their argument becomes obvious when it is observed that other departments have assigned utility tractor operator positions. Granted claimant J. Michael does hold seniority in the class of utility tractor operator in the track sub-department, such seniority in no way extends to a particular utility tractor, nor is carrier limited in any way in the utilization of such equipment in the way of transfer to other departments or loaning such equipment to other departments.

Carrier's records do not reveal that claimant Michael has ever operated the utility tractor used by water service mechanic on the dates of this claim. That particular piece of equipment is ordinarily used only in the summer months to pull a disc to cut down weeds.

The operation of utility tractor SPO-121 by Water Service Mechanic William Lusch, January 18 and 21, 1957, in no manner affected the seniority of utility tractor operators of the track sub-department for the reason that all employees of that class, including Claimant Michael, were working as utility tractor operators and unavailable for the service here under discussion. A water service sub-department employee was used only in the absence of any available, qualified employee of track sub-department. In those circumstances, Rule 4 of the current agreement dealing with seniority of employees in the several sub-departments is not involved in this case.

It is clear from a review of the facts in this docket that the project involved required the service of both water service department and track sub-department employees to accomplish the end result. However, the line of demarcation between the crafts of those departments was clear and was at all times observed; in short, the work was divisible and was properly divided between the crafts involved.

CONCLUSION

The claim in this docket is entirely lacking in merit or agreement support and carrier requests that it 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.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants were used on claim dates to dig trenches for the installation of a sewer by Water Service forces. The record shows that the trenches were dug to such depth as to require shoring up the sides with lumber to prevent cave-ins, and that it was necessary to use a sump pump to keep water out of the trench while excavating and when sewer pipe was installed. The work of back filling trenches was performed by a Water Service employee using a utility tractor.

Claims (1) and (2) are based upon the following rule:

"RULE 54

When an assigned employee is required to fill the place of another employee receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of an employee receiving a lower rate, his rate shall not be changed."

Claims (3) and (4) are based on the fact that the Agreement's Wage Schedule places the position of "Utility Tractor Operator" under the Track Sub-Department, Group 2 — Miscellaneous; that, therefore, Claimant's seniority rights were allegedly violated when he was not used to operate the tractor on the specified claim dates.

The Carrier's defense to these claims is bottomed on two premises: First, that the work involved was maintenance work which "traditionally has been the work of trackmen"; and, second, that the work of back filling the trenches was Water Service work properly assigned to a Water Service employee.

The Board finds, however, under the facts of this record that the entire project was designed solely for the purpose of installing water service facilities and, as such, all work done in connection therewith belonged to employees of the Water Service Department.

Consequently under the cited rule, Claims (1) and (2) are valid and will be sustained; Claims (3) and (4) are 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 Rule 54 of the Agreement was violated.

AWARD

Claims (1) and (2) sustained.

Claims (3) and (4) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1963.

DISSENT TO AWARD 11618, DOCKET MW-10401

The majority holds that the work of digging a ditch under a series of tracks, removing and replacing ties, is not Section Laborers' work, but is Water Service work and payable at the latter rate since it was done for the purpose of installing sewer pipe.

This conclusion is erroneous since it ignores basic facts as well as principles. It ignores the fact that there is no evidence that track laborers dug ditches anywhere but under tracks, a fact which incidentally is admitted by the Organization in the record. It further ignores the established fact that these track laborers worked under the sole supervision of a track foreman and were performing work recognized on this railroad to be track work and that alone.

This award ignores the well established principle that where a general scope rule is involved, the Petitioner has the burden and must submit proof that the work claimed has in the past been performed **exclusively** by those claiming it. Awards 11129, 10389. The Employes here submitted no proof, but merely allege past practice. The Carrier, however, did submit proof to support its position that the work involved was track work and had been so treated historically on this railroad. Clearly, removing and replacing ties is track work not water service work. The project with which this case is involved is one comprehending both track work and water service department work. Water service employes performed water service department work here involved in the handling and installing of sewer pipes. They were under the supervision of a water service department foreman and properly so. This award removes the duality of track department-water service department interest in this project.

For these reasons, Award 11618 is in error and we dissent.

D. S. Dugan

P. C. Carter

W. H. Castle

T. F. Strunck

G. C. White