

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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 use of other than B&B forces to handle and install two air compressors at Vicksburg Shops on December 5, 1955, was a violation of the Agreement between the two parties to this dispute.

(2) B&B Foreman H. B. Camp and each employe assigned to his gang as of December 5, 1955 be allowed four hours' pay at their respective straight-time rates account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On December 5, 1955 the work of unloading and installing two air compressors in the Carrier's Vicksburg shops was assigned to and performed by Mechanical Department employes, who hold no seniority rights under the provisions of this Agreement.

The work is of the nature and character that has heretofore been usually and traditionally performed by the Carrier's Bridge and Building Department employes.

The employes holding seniority in the Bridge and Building Department were available, fully qualified and could have efficiently and expeditiously performed the work described above, had the Carrier so desired.

The Agreement violation was protested and a suitable claim filed in behalf of the claimants.

Claim was declined, as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The Scope Rule reads as follows:

"SCOPE

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

Subdepartment although they did most of it. This work has partly been done by men in other crafts. The Claimants have failed to establish their exclusive right to this work. If they desire the exclusive right, they must negotiate a rule with the Carrier."

Award 7583 of the Third Division, Referee Livingston Smith participating, also supports the position of the Carrier in this dispute:

"While there are conflicts in the record as to past practice in reference to assignment of debris clearance work, we conclude that such work has in the past been performed by both B&B and section forces. Thus, past practice cannot be said to have effectively delegated the same to either group of employees, nor that either group has traditionally and customarily performed same."

In a dispute as to whether Maintenance of Way forces or Telegraphers and others had a right to perform crossing protection work, it was found that employees of several crafts had performed the work in the past. The issue was decided in Award 7809, wherein John Day Larkin, Referee, found that the evidence indicated that the Maintenance of Way Employees had never had exclusive rights to such work:

"The Scope Rule of the Maintenance of Way Agreement, as it stands, has not been violated in this instance, since it does not provide for the exclusion of others in the performance of the service in question. Nor do we find any other provision of the parties' Agreement which has been contravened."

In conclusion, the Carrier asks that this claim be denied on the following grounds:

1. Notice was not given, nor was opportunity to participate in this dispute allowed System Federation No. 99 (AFL-CIO., representing the International Association of Machinists, the third party to this dispute;
2. This work belongs to the Machinists, is contained within their Classification of Work Rule and has generally been performed by them for many years; and
3. The Maintenance of Way Employees cannot show exclusive right to this work, and thus cannot contend that the work belongs exclusively to employees covered under the Maintenance of Way Schedule.

All data in this submission have been made available to the Employees and are made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a companion case to Award No. 11784. The parties, the Agreement, the issue and the applicable principles are the same. The material facts of record differ in detail but are the same. The material facts of record differ in detail but are the same in substance and probative value.

Here as in our Opinion in Award No. 11784, which is incorporated herein by reference thereto, we find that Petitioner has failed to satisfy its burden of proof. We will deny 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 Carrier did not violate 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 25th day of October 1963.