

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

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

(1) The Carrier violated the Agreement when it assigned Bridge and Building department employees instead of Water Service department employees to install a cesspool at the section quarters at La Puente, California.

(2) Water Service department employees W. F. Doyle, J. E. Martin, P. H. Fitzgerald, Michele Damico and J. P. Murphy each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours consumed by B&B forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On or about October 20, 21 and 22, 1959, a new cesspool was installed to serve the section quarters at La Puente, California. This cesspool was 16 feet deep and 14 feet square. The cesspool lining was made up of 3x12 creosoted planking. A truck mounted crane was used to excavate and backfill for this cesspool installation.

Water service forces have heretofore been used to perform work of cesspool installation. In fact, Water Service forces installed three other cesspools at this same location (La Puente) namely, the original cesspool to serve the train depot at La Puente and the second cesspool subsequently installed to serve that same train depot when the first cesspool became full and also installed the cesspool serving the Section Foreman's quarters at La Puente. The subject cesspool, which was built by B&B forces, was connected to the cesspool serving the section foreman's quarters and which had been installed by Water Service Department forces. Water Service forces also installed cesspools at Bassett, Saugus, San Fernando and in the Los Angeles General Shop. Statements substantiating the installation of the aforementioned cesspools by Water Service forces have been reproduced by

when established, shall be the last date the employee entered the class in which he has performed ninety (90) calendar days of consecutive service. Transfer from one class to another and from one seniority group to another within the same sub-department shall not cause forfeiture of seniority in the class or seniority group from which transferred.

An employee who acquires seniority in any of the higher classes of seniority group in a sub-department (with the exception of an employee who acquires seniority in a miscellaneous seniority group) shall thereby establish the same seniority date in all of the lower classes of such seniority group in which he has not previously acquired seniority."

Obviously, nothing whatever in any of those Agreement provisions even so much as implies that work subject of this dispute will be performed exclusively by Water Service Sub-Department employees.

The statements quoted hereinabove from Bridge and Building Sub-Department employees establish that work of the nature forming basis of this claim has been performed by employees in that Sub-Department for a minimum of 22 years (see George E. Croyle's statement above), and it is a point of some significance that although the agreement between this Carrier and the Brotherhood of Maintenance of Way Employees was reprinted in May of 1948, no provision was made to reserve to Water Service Sub-Department employees the work here in dispute. Further, the provisions of Rules 1, 2 and 4 were part of the Agreement prior to the last revision of the current Agreement in 1953 and they were re-adopted without material change when the last cited revision was made. In those circumstances, it is obvious that those Agreement provisions were not intended to have the effect as now — some 8 years later — contended by Petitioner.

CONCLUSION

Carrier submits it has clearly shown the within claim to be entirely lacking in merit, and asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier, in this claim, assigned Bridge and Building employees to install a cesspool to serve the section quarters at La Puente, California. The Brotherhood urges that the Carrier should have used Water Service Department employees for the job.

The employees allege that their seniority rights were violated because Rule 3 of the agreement provides, "Seniority rights of all employees are confined to the sub-department in which employed." However, this argument is necessarily predicated upon the assumption that the agreement has reserved the right to perform this work to these certain employees.

The Carrier contends that they have not bargained away their right to assign this work to a specific craft, and allege that in fact at least two other crafts have performed this type of work throughout the system in the past.

We are of the opinion that the Scope Rule is of a general nature, and therefore does not include a reservation of this type of work. The Brotherhood has failed to prove a sufficient system-wide practice to show the exclusive right of these employees to this work. Therefore, the claim must 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 17th day of July 1964.