

Award No. 13364
Docket No. MW-13551

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, 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 and practices thereunder when, on April 17, 1961, it assigned or otherwise permitted other than Water Service Sub-department employees to perform the work of repairing the toilet in House Trailer ED-110, located at Marion, Oregon.

(2) Water Service Mechanic A. A. Rhodaback be allowed four (4) hours' pay at his straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant Rhodaback has seniority as a Water Service Mechanic from February 15, 1944. He was assigned as a Mechanic on Water Service Gang No. 35, with headquarters at Eugene, Oregon.

On April 17, 1961, employees of the Automotive and Work Equipment Shops made repairs to the toilet in House Trailer ED-110. Four hours were consumed in the performance of said work.

This is work of the character which has historically and traditionally been assigned to and performed by employees of the Water Service Sub-Department.

The Agreement in effect between the two parties to this dispute, dated January 1, 1953, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Employees coming within the scope of the Carrier's Agreement with the petitioner were assigned to perform all work on trailer houses until employees from the Automotive Work Equipment Department claimed the work belonged to them. Then the Carrier simply

CONCLUSION

Carrier submits it has clearly shown the within claim to be entirely lacking in merit, and if it is not dismissed, asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In this dispute, the Carrier assigned or otherwise permitted an employe of the Automotive and Work Equipment Shop to make repairs to the toilet in House Trailer ED-110, located at Marion, Oregon. The Petitioner contends that this is work of the character which has historically and traditionally been assigned to and performed by employes of the Water Service Sub-department, in which Claimant holds seniority as a Water Service Mechanic, and was assigned as a Mechanic on Water Service Gang No. 35, with headquarters on the Division where the work was performed.

The Carrier contends that in cases such as this, where a class of employes claims a right to certain work, they must either establish the existence of a rule which expressly reserves the work to them, or they must show a general Scope Rule, and then prove a controlling past practice whereby said work has been reserved to them.

It is apparent from the record that the point of controversy is the past practice aspect of this case. There seems to be no evidence of a rule reserving this work to the Claimant. There is, however, considerable disagreement as to the past practice involved. This issue, apparently, places the burden of proof upon the Employes to show past practice.

The record is barren of any showing of a controlling practice whereby said work has been reserved to Claimant. While fully recognizing that "burden of proof" is a nebulous sort of thing, not easy to define, we are of the opinion that the Employes have not supported their allegation. (See Award 12972.)

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 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 26th day of February 1965.