Award No. 13694
Docket No. MW-13567

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Kieran P. O'Gallagher, 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 Carrier violated the Agreement and established practices thereunder when, instead of calling and using Section Foreman D. N. Young and Section Laborers George Chadwick, Lucius Cole and Albert Cooper to perform service of ventilating and attending to car heaters on refrigerator trains while in yards at Jackson, Mississippi, it assigned or otherwise permitted employes outside the scope of its Agreement with the Brotherhood of Maintenance of Way Employes to perform such service outside of the claimants' regularly assigned hours on February 7, 8, 11, 13, 14, 16, 21, 22, 24, 27, 28, March 1, 3, 7, 9, 10, 14, 15, 17 and on other dates subsequent thereto.

(2) Section Foreman D. N. Young, Section Laborers George Chadwick, Lucius Cole and Albert Cooper each be allowed payment for one call for each instance on each date that other classes of employes are used to perform work of the character referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Section forces, over a period of more than thirty years, have serviced all refrigerator cars passing through the Jackson, Mississippi Yards whenever such cars required service thereon. When such service was required during overtime hours, the section forces would be notified accordingly and would perform the necessary servicing work.

Prior to February 7, 1961, there had never been any question as to the right of the section forces to exclusively perform the subject work at the Jackson, Mississippi Yards. Thereafter, however, the Carrier arbitrarily and unilaterally changed this recognized and well-established practice, and it assigned such work to the section forces **only during their regularly assigned hours.** During overtime hours, the Carrier assigned this work to other classes of employes on duty at the time such service work was necessary.

In each instance hereinbefore set forth, the section forces were available, willing and qualified to have performed this work.

CONCLUSION

In summing up, it must be concluded that the work involved in the case before this Board is not work that is assigned to the Maintenance of Way organization by specific reference in the agreement. The Organization has failed to cite any rule of the agreement that reserves it to employes of their craft. The Carrier has shown by its Exhibit Nos. 3, 4, 5 and 6 that such work has never been exclusive to any craft, and was performed by other than Maintenance of Way employes at the time the agreement between the parties here involved was consummated. No employe of the Maintenance of Way craft has been injured or has suffered a loss of earnings as a result of Carrier's action. In the absence of any contractual obligation to call the named Claimants to perform the disputed work, this Board must deny this claim in its entirety. The Third Division has in a long line of awards consistently recognized and held that its authority is limited to the interpretation and application of agreement rules as written and has no authority to extend, modify, add to, take from, or write rules for the parties to a dispute. Should the request of the Employes be sustained, your Board would go beyond the function of interpreting existing provisions in the agreement between the parties as delegated by the Railway Labor Act, and, in effect, write a new rule into the agreement. The Board is referred to First Division Awards 7057 and 14566, Second Division Award 1474, Third Division Awards 389, 871, 1230, 1609, 2612, 2622, 3407, 4763, 5079, 6828, 7498, 8219 and 9198, and Fourth Division Award 501, as evidence of such findings.

There is no basis for the claims, and they should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue here is whether the service of ventilating and attending to car heaters on refrigerator trains at Jackson, Mississippi, is the exclusive work of Section Forces.

The Scope Rule of the current agreement, which applies over the Carrier's entire system, fails to expressly reserve this work to the Claimants. It is urged by the Organization that past and prevailing custom and practice establishes in Section Forces the exclusive right to do the work described in the Statement of Claim. In order for the Claimants to prevail, they have imposed upon them the burden of proving by a preponderance of the evidence that Section Forces performed the service described to the exclusion of all other crafts not only at Jackson, Mississippi, but over the Carrier's entire system, and we find they have failed to meet the burden.

In the circumstances found, we must 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 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 30th day of June 1965.