Award No. 13995
Docket No. CL-14967

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5545) that:

(a) The Carrier violated the Clerks' Agreement at Muskogee, Oklahoma, on November 24th and 29th, 1963, when, it used employes of Tackett-East to wash walls, windows and scrub floors at the Muskogee Yard Office, and,

(b) That Mr. Earl Pingleton, furloughed Oilhouse Man, shall now be compensated for 20 hours on November 24, 1963 and 22 hours on November 29, 1963, at the regular rate of his position account of this violation.

EMPLOYES' STATEMENT OF FACTS: Prior to November 24, 1963 all cleaning and scrubbing and waxing of floors at the Muskogee Yard Office had been assigned to and performed by Oilhouse Men coming under the Scope of the Clerks' Agreement daily, and is recorded on the employe's time card as "Cleaning Yard Office." This daily cleaning includes the Trainmen's, Yardmen's, and Hostler's rooms which are all in the same building as the Yard Office proper.

On November 24th and 29th, 1963 the Carrier contracted with Tackett-East, a local dealer in janitor supplies, to have their employes clean the interior of the Yard Office and the adjacent rooms.

Mr. Pingleton, Claimant, a furloughed Oilhouse Man, holds rights under the Clerks' Agreement with seniority date of September 7, 1954, and was available for duty on these days. The employes of Tackett-East hold no rights under the Clerks' Agreement.

POSITION OF EMPLOYES: The material facts in this case are not in dispute and involve the failure and refusal of the Carrier to assign work coming under the Scope of the Clerks' Agreement to employes holding rights under such Agreement.

again, at least for a considerable period. Many railroads contract for cleaning companies to clean their offices without objection, and the Clerks' Agreement on this property does not prohibit the Carrier from having a specialist come in and give the yard office the thorough cleaning which was required before installing IBM equipment.

For the reasons stated, the claim is not supported by the agreement and is entirely lacking in merit. The claim must be declined.

OPINION OF BOARD: Claimant was, on November 24 and on November 29, 1963, an Oilhouse Man on furlough, who was covered by the Clerks' Agreement with this Carrier, and who held seniority rights thereunder. His duties, when working, as stated in his time card, consisted, among other things, of "Cleaning Yard Office." This includes the cleaning of the Trainmen's Yardmen's and Hostler's rooms, all located in the same building as the Yard Office. Nowhere in the record is this denied.

On November 24 and again on November 29, 1963, Carrier hired a local dealer in janitor supplies to thoroughly clean the Yard Office before installing IBM equipment. Employes of this contractor performed 20 hours of work time on November 24 and 22 hours of work time on November 29. Claimant requests compensation for 42 hours "at the regular rate of his position."

Carrier's position is "that the work of cleaning yard offices has not been contracted exclusively to Clerks; that the Carrier was not equipped to furnish the chemicals and buffers which were required in the performance of the work and that claimant and other oilhouse men do not have the skill required in the performance of such work."

The Scope Rule of the Agreement does not specifically include "Oilhouse Man" among the craft or class of employes covered by the Agreement. It does include, among others, "janitors; porters; and all other employes performing analagous service." There is no question that the cleaning of the Yard Office is included in this Agreement.

It is true that the Scope Rule does not define, nor does it describe, the work of the class of employes covered. And it is a sound principle of this Board that in the absence of such definitions or descriptions, "it is necessary to determine whether the work claimed is historically and customarily performed by such employes." (Award 11525 and those cited therein.) But nowhere in the record does it appear that the cleaning of the Yard Office has ever been done by anyone other than Claimant or, perhaps, by janitors.

In a letter to the General Chairman, dated December 24, 1963, Carrier's Assistant Superintendent of Transportation merely said that:

> "The Carrier did not have the proper equipment to clean, wash walls and disinfect the building which was let to Tackett-East Company."

Again, in a letter dated March 9, 1964, Carrier's Assistant General Manager–Personnel detailed the cleaning work done by the contractor and said:

> "I have searched your agreement and am unable to find any rule that prevents the carrier from contracting out such work, or any rule stating that the work performed in this instance belongs exclusively to employes represented by you."

This does not show that the cleaning of the Yard Office had ever been done by anyone not covered under the Scope Rule of the Agreement. On the contrary, it is established by the notation on the Claimant's time card, and by past practice, that this work was historically and customarily done by Claimant.

Chemicals and buffers required in the use of the cleaning process, if not in stock, could easily have been purchased or rented from the contractor or other sources. They are not such unusual supplies or such heavy equipment which Carrier could not have expected to have in stock, or which it could not have readily purchased and rented. It is not denied that prior to the date when Claimant was furloughed "it was a regular practice to bring waxing machine from General Office to Yard Office the last Friday in each month and the Oilhouse Man waxed the floor the following day." Carrier says only that the machines used by the contractor "are must larger and require more skill to operate because they are the type used commercially by such firms who specialize in the field of professional refinishing of floors." This is not convincing evidence. It is a mere assertion.

There is also no probative evidence to show that Claimant did not have the skill to do the work. For the most part, it was common labor work. The buffer was not such an intricate or complicated machine that required special skills of the operator. It could have been effectively and efficiently used by Claimant. As a matter of fact, he had used one. The fact that it may have been a smaller one is not significant.

On the basis of the entire record, it is clear that the Carrier had no right to contract out the work and that Claimant was entitled to such work. He is, however, entitled to recover only pay at his basic hourly rate for 42 hours, less any compensation he may have received from other employment on November 24, 1963 and on November 29, 1963.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier violated the Agreement.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1965.