Award No. 14022
Docket No. MW-13874

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, 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 October 2, 3, 4, 5, 6, 11, 12 and 25, 1961, it assigned or otherwise permitted other than Water Service Sub-Department employes to perform the work of connecting water lines to air coolers, installing water drain valves and testing gas stoves and lines in Trailer Houses ED-165, ED-169, ED-170, ED-171, ED-173, ED-174, ED-182, ED-183, ED-185 and ED-187.

(2) Water Service Sub-Department employes Byron Roberts, Max Cohn, Carl O. Owen, L. A. Gibbons, C. W. Ballingham, J. H. Rush, C. A. Wood and W. H. Richards each be allowed eight (8) hours' pay at their respective straight-time rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Each of the claimants has established and holds seniority within the Water Service Sub-Department and each is assigned to Water Service Gang No. 3, with headquarters at Sparks, Nevada.

On the dates set forth within Part (1) of the Statement of Claim, employes of the Automotive Work Equipment Shop connected water lines to air coolers, installed water drain valves and tested gas stoves and lines in Trailer Houses ED-165, ED-169, ED-170, ED-171, ED-173, ED-174, ED-182, ED-183, ED-185 and ED-187. Sixty-four (64) 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 employes 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.

OPINION OF BOARD: In accordance with the provisions of Section 3, First (j), of the Railway Labor Act, notice of the pendency of this dispute was served by the Division upon System Federation No. 114, Railway Employes' Department, AFofL, Mechanical Section, as the representative of the Carrier's Maintenance of Way Department (work equipment – roadway machines and scales sub-departments). That Organization declined to participate herein.

The trailer houses involved in this dispute were delivered to the Carrier's automobile and work equipment shop for necessary adjustments and alterations prior to being placed in service. Shop employes performed this work, including that upon which the claim is based, i.e., ". . . connecting water lines to air coolers, installing water drain valves and testing gas stoves and lines . . ."

The issue is whether the Scope Rule of the effective Agreement was violated when the work described herein was performed by other than employes covered by the Maintenance of Way Agreement.

Substantially the same issue confronted the Board in recent Award 12972 (1964) involving the same parties. There we denied the claim on grounds that the Employes had failed to establish exclusive work rights through ". . . controlling past practice . . .".

Here the same burden of showing such practice must be carried by the Employes to prove Claimants' exclusive right to perform the work involved, and, thereby, to establish a violation of the Scope Rule under the facts of record. (Cf., Awards 12774 and 13364, same parties as here.)

The Employes have attempted to do so by submitting certain affidavits showing performance of similar work by Water Service Sub-Dept. Employes.

The Carrier counters by also offering affidavits showing such work to have been performed by the automotive shop crafts.

On this state of the record, then, the Board has no alternative but to hold that the Employes have failed to sustain the burden of proof required to establish by a preponderance of the evidence a controlling past practice showing exclusive work rights.

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 17th day of December 1965.