Award No. 14034
Docket No. MW-13826

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

1. The Carrier violated the effective agreement when it abolished the only position of Foreman of Water Supply on the Columbus Division effective with the close of work Wednesday, May 31, 1961, and instructed and permitted the work accruing to this position to be performed by others who hold no seniority in seniority sub-department (e) Water Supply, and as a result thereof:

2. Mr. G. H. Haynes be paid at the rate of pay of Foreman of Water Supply for all time lost beginning with June 1, 1961 and to continue until settlement of this claim is made. In addition thereto:

3. The position of Foreman of Water Supply, Columbus Division, be re-established in accordance with the provisions of the current agreement.

EMPLOYES' STATEMENT OF FACTS: Claimant G. H. Haynes holds seniority as Foreman of Water Supply with seniority date of January 20, 1937 and was available and is qualified to perform duties of his classification. He has performed the duties of Foreman of Water Supply without interruption since the date of his established seniority.

During the first half of June, 1961, First Class Carpenter J. W. Edwards recharged the fire extinguishers on the Columbus Division.

On June 1, 1961, Rail Welder J. W. Isabell removed closet bowl from one of the rest rooms in Company depot at Camp Hill, Alabama, and installed water faucet and made repairs to the water facilities of the trailers assigned to the track forces then stationed at Camp Hill, Alabama.

On June 2, 1961, Electrician Simmons and Pipefitter Calhoun made repairs to the air conditioning unit in the Chief Dispatcher's office at Columbus, Georgia.

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(Referee LaBelle)

* * * "We find Organization has failed to sustain the burden of proof on this claim and it must be denied. (Awards 9211, 9621)."

And, there are many other awards on this point. The Petitioners to date have not sustained the burden of proof.

In conclusion, Carrier reiterates that there is no rule in the agreement to substantiate any portion of the Petitioner's claim. The Agreement has **not** been violated. We emphatically deny the Petitioner's allegations, and we again challenge them to prove their charges.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to dismiss or deny this baseless claim in its entirety.

OPINION OF BOARD: In this case the Carrier abolished the position of Foreman of Water Supply on the Columbus Division effective with the close of work Wednesday, May 31, 1961. The Organization alleges that on eight specific occasions the Carrier permitted the work of this abolished position to be performed by others who hold no seniority in seniority subdepartment (e) Water Supply. The Carrier maintains that with the final passing of the steam locomotive from its lines, the position became unnecessary and was properly abolished.

There seems to be some conflict as to whether or not the Foreman of Water Supply actually performed duties other than those concerning the water tank and its appurtenances. We find as a question of fact, that the record supports the theory of the Organization, that the Foreman did in fact, perform other duties than those relating solely to the water tank.

We are persuaded by the Carrier that the agreement does not reserve this work generally or specifically to the Maintenance of Way Employes. Therefore, it is usually said that where no provision of the agreement specifically governs the situation and the Scope Rule is general in nature, the Petitioner must prove its exclusive right to the work it claims, by establishing a past practice commensurate with such a result. The Organization relies in part on a three-party agreement, to establish the practice required. The evidence which is introduced in the record is a self-serving declaration in the form of a unilateral report of one of the parties' understanding of the agreement and is, therefore, of no probative value to us in resolving the instant question.

We hold that the Organization has failed to present the necessary evidence to support the burden of proof required to establish sufficient past practice to prove that the work in question was reserved specifically to the Foreman of Water Supply. We therefore hold that the Carrier did not violate the agreement when it abolished the position involved in this case.

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.