



Award No. 16353
Docket No. MW-16992

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement on August 27 and 30, 1965 when District Supervisor Work Equipment E. Rohloff removed and installed the pinion shaft in the Indexer Gear Box Assembly on Jackson Tamper PB-8 at Wellington, Kansas instead of assigning water service mechanics to perform said work.
(Carrier's file L-126-893.)

(2) Each mechanic in Group 3 (b) listed on the 1965 seniority roster for the Motor Car Shop at Herington, Kansas be allowed pay at their respective straight time rates for an equal proportionate share of the total number of hours consumed by Supervisor Rohloff in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On August 27 and 30, 1965, the Carrier assigned the work of replacing a broken pinion shaft in the Indexer Gear Box Assembly on Jackson Tamper PB-8 at Wellington, Kansas, to District Supervisor Work Equipment E. Rohloff whose position is not encompassed within the scope of the Agreement. The replacing of said pinion shaft required the removal of the gear box assembly from the tamper and to then disassemble it in order to remove and replace the broken pinion shaft, followed by reassembly and remounting of the gear box on the tamper.

The claimants have acquired and hold seniority as water service mechanics within Group 3(b) of the Maintenance of Way Department and have historically and traditionally been assigned to and have skillfully performed all work of the character here involved.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated May 1, 1938, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

EXHIBIT D — Memorandum of Agreement between the Chicago, Rock
Island and Pacific Railroad Company and the Brotherhood of
Maintenance of Way Employees, dated September 21, 1942.

(Exhibits not reproduced.)

OPINION OF BOARD: A piece of equipment referred to as a "Jackson Tamper PB-8" broke down near Wellington, Kansas. The machine was transferred to a set out for the purpose of determining the mechanical difficulty, extent of repair etc.; Carrier gave Work Equipment Supervisor Rohloff, in whose area of responsibility the breakdown occurred, the assignment to examine the machine and if possible make the necessary repairs. Upon inspection, it was discovered that the pinion shaft was broken. The replacing of the shaft required the removal of the gear box assembly from the tamper, its complete disassembly to remove and replace the broken pinion shaft, followed by reassembly and remounting of the gear box on the tamper. This work was done by Supervisor Rohloff.

The Organization contends that the Supervisor is outside the coverage of their Agreement, as a consequence of which, Carrier has violated the Scope and Seniority rules of the Agreement. They aver that the work belonged to those employes in seniority classification 3 (b) (Water Service Mechanics), that they have the right to perform all service directly or indirectly related to the repairing of Carrier's roadway equipment within the territorial limits of the seniority district. They thus argue that these employes are entitled to be paid proportionately for the total number of hours spent by the Supervisor on the inspection and repair work.

The Carrier defends its action by stating categorically that the type of work performed by the Supervisor, in his capacity of District Work Equipment Supervisor, has been performed by employes occupying this position without interruption or qualification since the introduction of motor cars and work equipment on the Carrier's property prior to the year 1930. They further contend that the work has never been reserved exclusively to Group 3(b) employes under the schedule agreement or under any other existing agreements. These main contentions are denied by the Organization.

As we view this case, we must once again analyze the Scope Rule involved. It reads

"RULE. 1. SCOPE

These rules will govern the hours of service and working conditions of all employes not including supervisory forces above the rank of foreman, performing work of a maintenance and construction character in Maintenance of Way Department (not including Signal, Telegraph and Telephone Maintenance Department, nor employes performing work of a clerical nature) and employes listed below:

* * * * *
* * * * *

Group 3. * * *

(b) Water Service mechanics."

In order to be successful in the prosecution of this claim, the Organization, faced with a general type Scope Rule quoted above, must demonstrate by a preponderance of evidence that the work in question has historically and traditionally been performed by them to the exclusion of others. The burden of proof, as in all claims presented to this Board, rests with the Petitioner. We find the evidence requisite for a finding by this Board of a breach of Contract, to be insufficient. Hence there has been no violation of the Scope Rule or of the Seniority rules of the Agreement.

The employes have also advanced the Argument that Carrier has violated a Memorandum of Agreement signed by the opposing parties, pertinent portions of which are quoted below

"MEMORANDUM OF AGREEMENT

It is agreed that part of Group 3 of Rule I, Maintenance of Way Agreement, dated May 1, 1938, reading in part as follows:

'their work will also include all repairs to and maintenance of all roadway department motor cars,'

does not include running repairs consisting of putting on brake shoe, new belts, batteries, spark plugs, etc.

* * * * *

When the following light work equipment and tools used in the Maintenance of Way Department require other than running repairs, the work will be performed by motor car shop employees."

* * * * *

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Electric Spot tampers
Mechanical Spot tampers
Power Ballasters"

The first portion of the above cited memorandum, inasmuch as it pertains to roadway department motor cars, is inapplicable to the instant case. The second portion refers to "light work" equipment and does not specifically list the type of "tamper," with which we are concerned. Carrier has pointed out that the Jackson Tamper, Jackson being the trade name, weighs 20,000 lbs., is self propelled on a track with an operator, and as such cannot be classified as light equipment. The Organization has failed to present evidence sustaining their position that the Tamper is light equipment. The burden of proof, once again is always on the Petitioner. Failing to prove this essential point, we must deny the claim.

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 Agreement was not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.