



Award No. 16742
Docket No. MW-16823

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned a roadway machine operator to change the rubber brushes on Yard Sweeper No. 286 while it was in the shop for major repairs on or about June 30, 1965. (System File SG-2-65/WM-4-65.)

(2) Motor Car Repairman N. L. Iseminger be allowed pay at his time and one-half rate for the same number of hours consumed by Roadway Machine Operator A. Krumrie in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant had established and held seniority as a motor car repairman within the Scales and Work Equipment Sub-department on the Gary Division. He was regularly assigned as such on the night shift at the motor car repair shop at Gary, Indiana.

On or about June 30, 1965, Yard Sweeper No. 286 was sent to the work equipment repair shop at Gary, Indiana for repairs. The repair work performed on said roadway machine consisted mainly of removing impeller and covers, repairing brush holders, renewing impeller shaft and rubber brushes, cleaning and adjusting spark plugs, making a compression test, adjusting drive chains and conveyor belts and repairing rollers. All of said work was performed during the day shift. With the exception of the renewal of the rubber brushes, all of the repair work was assigned to and performed by motor car repairmen.

While the yard sweeper was in the motor car repair shop, the Carrier assigned and used Machine Operator A. Krumrie, who does not hold any seniority whatever in the Scales and Work Equipment Sub-department, to renew the rubber brushes. He consumed a total of eight (8) man hours during his regular day assignment in the performance of said repair work.

The claimant was available, willing and fully qualified to have renewed the rubber brushes but was not called or notified to do so.

The correspondence pertaining to the handling of this claim on the property is set forth as Carrier Exhibits A through J.

INVOLVED RULES

The Organization maintains that the Carrier has violated the following rules of our August 1, 1952 Agreement:

"Rule 4. Seniority rights of all employees are confined to the sub-department and group in which employed, except as otherwise provided herein . . ."

* * * * *

III. Rule 56 (a) All work in connection with maintenance, repair or dismantling of motor cars, motor vehicles and various other machines used in the Maintenance of Way Department, except extensive repairs to cranes and similar equipment which cannot reasonably be made in Maintenance of Way shops, the inspection and maintenance of scales, and the operation of Maintenance of Way Department highway trucks and buses only which are used exclusively for the transportation of material and/or the transportation of employees of the Maintenance of Way Department shall be the work of the Scales and Work Equipment sub-department.

* * * * *

(g) All work described under Rule 56 III shall be performed by employees of the Scales and Work Equipment sub-department, except as provided in Memorandum of Understanding dated November 8, 1939, and agreement with Shop Crafts effective April 3, 1922." (This Paragraph (g) is as redesignated on March 4, 1957; it was formerly shown as (h) in the August 1, 1952 Agreement.)

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier contends this claim was not properly handled on the property, citing Article V of the August 21, 1954 Agreement. In Awards 15837 and 16258, between those same parties, the Board ruled on similar procedural issues and found that the claim, as in the instant case, had been submitted, appealed and denied in compliance with the procedures in accordance with the Railway Labor Act. This dispute then is properly before this Board on its merits.

With respect to the merits, the Organization claims that Carrier violated Rule 56 III of the Agreement when Carrier assigned and used Machine Operator A. Krumrie, who does not hold any seniority in the Scales and Work Equipment Sub-department, to renew rubber brushes on Yard Sweeper No. 286, June 30, 1965. Further, it contends that Rule 56 III expressly restricts and allocates the work in connection with the maintenance, repair and dismantling of machines used in the Maintenance of Way Department to employees of the Scales and Work Equipment and said work is specifically designated therein as belonging to motor car repairmen. Claimant had established and held seniority as a motor car repairman and by being available and quali-

fied to perform the work involved, he was entitled to be called and used in preference to the machine operator. That regardless what practice may have been, it can be given no effect or force in relation to the clear and unambiguous language of Rule 56 III.

It is Carrier's position that Rule 56 III does not specifically list the work under the Agreement of motor car repairmen nor specify that they have the exclusive right to perform such work to the exclusion of other crafts and classes of employees; that vague general language such as "maintenance, repair or dismantling of . . . various other machines used in the Maintenance of Way Department" does not suggest the parties intended to preclude the operators of those "various other machines" from replacing parts or performing other work that is an incidental but necessary part of their duties in operating the machines; that the work complained of was done in accordance with past practice on the property.

Both parties have submitted exhibits in support of their positions wherein the Organization presented a page and one-half document setting forth names and dates when Motor Car Repairmen allegedly performed all this work in question. Carrier specifically refuted this with its own analysis of and breakdown of the dates in question. In addition Carrier attempted through affidavits of Machine Operators to show that a past practice has existed on the property wherein other than the Motor Car Repairmen had changed brushes on the yard cleaners as a normal duty. The Organization later had these three Machine Operators "qualify" their prior affidavits which in effect nullified the force and effect of this probative evidence.

We have carefully reviewed the exhibits and the record and the awards submitted in support of the Organization's position and fail to find a preponderance of probative evidence to support the Employees' claim. Supplying evidence that the involved work, in the instant dispute, was expressly allocated and restricted in connection with the "maintenance, repair and dismantling" to the Motor Car Repairmen, was intended by the language of Agreement, is the burden of the Employees.

With an irresolvable conflict of evidence before us, we find that the language of Rule 56 III does not in explicit or implicit language confer, restrict or allocate the specific work in question to Motor Car Repairmen and therefore such exclusive right to the work is not shown by other competent evidence, than that heretofore submitted. Since the Employees did not supply the proof needed, 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 Employees involved in this dispute are respectively Carrier and Employees 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 1st day of November 1968.