

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19373
Docket Number MW-18503

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Atchison, Topeka and Santa Fe Railway Company
(- Western Lines -

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted other than B&B forces to construct a concrete addition to the engine wash rack at Clovis, New Mexico. (System File 130-234-30)

(2) B&B employees A. E. Clark, W. N. Prince, G. R. Ralston, D. C. Hensley, W. M. Davis and A. J. Harris each be allowed forty (40) hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: Carrier assigned Shop Extension employees to the task of extending the concrete engine wash rack basin at Clovis, New Mexico an additional twenty feet. Claimants take the position that the assignment of this work to employees in another craft is a violation of the Seniority and Scope rules of their Agreement. They allege that such work has been historically performed by B&B employees and that employees covered by the Foreman's and Laborer's Agreement performed the work required on the initial installation of the wash rack.

Carrier, in response, states that the original installation was within the classification of work properly assigned to Shop Extension forces, because it involved Mechanical Department facilities, but that insufficient forces available at the time made it necessary to use B&B employees. In any event, Carrier replies, one instance is insufficient to prove an established, binding, practice. Carrier observes that the Board has rather consistently held that under Scope rules, such as this one, which are general rather than specific in nature, the Organization must prove that the work it claims has been assigned to employees of the class on an exclusive, system-wide basis. The required proof is not contained in this record.

Carrier also relies on a Memorandum of Understanding, dated December 21, 1949, entered into with employees represented by the Sheet Metal Workers Organization, which reads (in pertinent part):

"IT IS AGREED:

"(a) Shop Extension Forces will continue to handle such work as assembling, erecting, relocating, including excavations, forms, and foundations therefor (except when

"it is expedient to pour such foundations in conjunction with erection of buildings in which event foundations may be constructed by the forces erecting the buildings) painting, dismantling, major repairs, and renewals of machinery, cranes, hoists, boilers, pumps, tanks, furnaces, incinerators, Diesel Servicing and Repair Facilities excluding fueling and watering platforms (such are usually ground level concrete slabs or platforms located on main line tracks or in yards and are to be distinguished from the usual car floor height servicing and repair platforms handled by Shop Extensions Forces which are located in Shops, Roundhouses or adjacent thereto where general servicing and running repairs are handled by Mechanical Department Forces), Distilled Water Plants, Lube Oil Facilities, Mechanical Car Washers, Engine Cleaning Facilities, Sand Handling Facilities, Cooling Towers, Boiler Washing Plants, Steel Smoke Stacks at Power Plants; and other Mechanical Department equipment and facilities at Shops, Yards, Roundhouses, and Power Plants; all steam, air, gas, oil, and water lines serving the above mentioned machinery, equipment and facilities; oxyacetylene and electric welding when required."

The Sheet Metal Workers have received due notice, and in their submission take the position that the work in question is specifically reserved to them by their Agreement. They note that the MoFW Organization has failed to show assignment to its members in practice.

All parties are properly joined and the dispute is before the Board for resolution as provided by law. The Board, having carefully considered the entire record, concludes that the assignment of the work required to extend the engine wash rack to employees represented by the Sheet Metal Workers did not violate Carrier's Agreement with the Brotherhood of Maintenance of Way Employees. This conclusion is based upon consideration of the Memorandum of December 21, 1949, quoted above, the Scope Rule of Claimants' agreement and the record as it reflects the performance of such work on the property. There has been no showing by claimants that they have been assigned work of the type at issue, except in the one instance cited. This, under well recognized principles, would be an insufficient showing in the absence of the third party question. When considered with the clear reservation of such work to another craft by the December 21, 1949 Memorandum, there remains no doubt that the claim must be denied.

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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.