

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19494  
Docket Number MW-18543

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Atchison, Topeka and Santa Fe Railway Company  
( - Coast 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 repair the concrete floor in the "old wheel grinding building" at Redondo Junction, California. (System File 130-234-29).

(2) B&B employes L. W. Adams, G. S. Cordova, J. B. Reveles, D. A. Gilchrist, E. D. Barrera, G. D. Brandon and G. G. Valenzuela 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.

OPINION OF BOARD: Sheetmetal workers of Carrier's Shop Extension Forces removed a wheel lathe in the Redondo Junction Mechanical Department. The lathe was located in a 35 by 11 foot pit. After removing it the Shop Extension Forces filled, compacted, and then poured concrete to complete the process of restoring the floor.

Claimants allege that the assignment of this work to employees not covered by their Agreement is a violation of Article I - Scope. The Rule reads:

"This Agreement governs the hours of service, wages and working conditions of employes of the following classes in the maintenance of way and structures department: Bridge and building foremen; paint foremen; assistant bridge and building foremen; bridge inspectors; bridge and building mechanics; bridge and building painters; bridge and building helpers; welder gang foremen; welders; heat treaters; welder helpers; extra gang foremen; fence gang foremen; section foremen; assistant extra gang foremen and assistant section foremen; fuel foremen; pumpers and water treaters; roadway machine operators; section, extra gang, bridge and building, and water service laborers; fuel station and sandhouse helpers and laborers; track, bridge, tunnel and crossing watchmen and flagmen and such other classifications as may be shown in the appended wage scale or which may hereafter be added thereto."

It is apparent from the wording of the Rule that it is one of those characterized by many decisions of this Board as "general". A general scope rule will not, of itself, confer exclusive right to the performance of work. A party claiming exclusive right under a general scope rule must prove, by evidence with probative value, that it has performed the claimed work exclusively, system-wide by tradition, custom and practice. That principle is expressed in a line of cases that represents the decisive weight of authority on the question. Citation of particular cases has become superfluous. The point is too well established by the Board to require it.

Claimants recognize, of course, the burden of proof they must meet. To meet it they assert that Carrier "has by past practice given B&B forces exclusive right to perform this work." In their submission they further assert that Carrier did not rebut that assertion. The record, however, does not support claimant on that point. Carrier did take issue with the "practice or custom" claim when it stated in a letter to the General Chairman, "...Your appeal claim is not supported by either the rules of the Foreman's and Laborer's Agreement, past practice or custom." In any event simply making an assertion does not meet the requirement that the claimant present evidence with probative value.

The Sheetmetal Workers entered a submission which takes the position that their Agreement allocates the work in question to them. They also challenge claimants' contention that practice supports their position. According to the Sheet Metal Workers "its a common system-wide practice" for them to fill the hole left when machinery is removed.

The claim must be dismissed. The Scope Rule is of the general type. Claimants thus had the burden of proving an exclusive system-wide practice. They did not do so.

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;

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

That the claim be dismissed. .

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Claim dismissed.

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By Order of Third Division

ATTEST: E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.