

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19514
Docket Number MW-17530

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when it assigned shop craft employees to perform the work of cleaning and pumping water out of the elevator pits in the Union Station Subway on June 3, 1966. (System File 013-293-16)

(2) Mason and Concrete Mechanics John Kedge, Elmer Luecke and John Zmalla each be allowed 8 hours' pay at their pro rata rates because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: This claim arose on June 3, 1966, when Carrier assigned the work of cleaning and pumping water out of the elevator pits in the Union Station Subway to Shop Craft Employees. The Organization vigorously contends that the work involved in this dispute is exclusively reserved to the Claimants by practice, custom and tradition. The Scope Rule involved in this dispute is general in nature in that it does not specifically describe the involved work. Carrier, in denying the claim, asserts that the involved work has never been the exclusive work of the Mason and Concrete Mechanics; that other than Mason and Concrete Mechanics have also drained water from and cleaned elevator pits involved in the instant dispute over the years; that other than Mason and Concrete Mechanics have also used portable drain pumps to drain water from and clean elevator pits at other locations on the property over the years; and that for the reason that Claimants were fully employed at the time, they have no basis for a monetary allowance.

Since Rule 1 which is the Scope Rule is of the general type and does not describe or set out the work of pumping water from an elevator pit, we must determine to whom the work belongs based upon practice, custom and tradition on a system wide basis on this property. The record in this dispute discloses that the Organization has failed to maintain its burden of proof that Claimants had an exclusive right to pump water out of elevator pits on this property. There has been no competent evidence presented by the Organization which would support their position that Claimants had performed the work in this case to the exclusion of all other crafts and classes of employees on this property. Where work may properly be assigned to two or more crafts, an assignment to one does not have the effect of making it the exclusive work of that craft in the absence of a plain language indicating such an intent. Nor is the fact that work at one point is assigned to one craft for a long period of time of controlling importance which it appears that such work was assigned to different crafts at different points within the scope of the agreement. See Award 7031 (Carter). Based on the record, we must conclude that the involved work was not the exclusive work of Mason and Concrete Mechanics on this property.

Award Number 19514
Docket Number MW-17530

Page 2

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 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 30th day of November 1972.