NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19516
THIRD DIVISION Docket Number MW-18379

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Illinois Central Railroad Company

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

(1) The Carrier violated the Agreement and practice thereunder when it discontinued using section laborers to clean cars at West Yard, Jackson, Mississippi and assigned the performance of said work to employes outside the scope of its agreement with the Brotherhood of Maintenance of Way Employes. (System file LA-64-T-67/Case No. 498).

(2) Section Laborers Racy Brown and Aaron Arthur each be allowed pay at their straight time rate for an equal proportionate share of the total number of man hours expended by other forces in performing the work referred to in Part (1) of this claim, beginning on March 16, 1967 and continuing thereafter for each day that this violation continues to exist except that, on days when there are furloughed section laborers, the monetary payment shall be made to the senior furloughed section laborer.

OPINION OF BOARD: This is a Scope claim wherein the disputed work is the cleaning of cars at West Yard, Jackson, Mississippi, and wherein section laborers claim such work belongs to them, but has been assigned to employees outside their Agreement.

Claimants Racy Brown and Aaron Arthur (or furloughed section laborers) seek an award at their straight time rate for an equal proportionate share of the man hours expended by non-covered employees in performing such work, beginning on March 16, 1967 and continuing so long as the alleged violation exists.

On October 7, 1971, the Board gave notice of this dispute to the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, and such Organization advised it would not file a submission.

FACTS OF RECORD

For thirty (30) years prior to March 16, 1967 section laborers performed the car-cleaning work at West Yard, Jackson, Mississippi. For the last seventeen (17) of those thirty (30) years, the Claimants herein (Brown and Arthur) performed such work.

On March 16, 1967, and continuing thereafter, the Carrier assigned the car-cleaning work to clerical forces (freight house and station employees) who are outside the Carrier's Agreement with the Brotherhood of Maintenance of Way Employes.

On the property the Carrier asserted that Claimants were reassigned to their section gang because they were needed for section work and that freight house and station porter labor, available and not needed at other locations, were assigned to perform the car-cleaning work. Carrier also asserted that such work is not exclusively assigned to any one craft and, in addition, that Claimants did not sustain any pay losses. The Carrier expressly raised the "exclusivity" defense, namely, that, in order for claimants to prevail, they must prove that the disputed work was exclusively performed by covered employees on a system-wide basis and not just at a particular locale.

The Claimants did not offer evidence to prove a system-wide practice, nor did Carrier offer evidence to disprove such practice.

The applicable Scope Rule reads as follows:

"SCOPE

This schedule governs hours of service and working conditions of all employees in the Maintenance of Way and Structure Department, except:

(a) Signal Department employees.
(b) Clerical forces.
(c) Engineering forces.
(d) Scale Department employees.
(e) Water Works Foremen, repair men and helpers.
(f) Telephone and Telegraph Maintenance employees.
(g) Bridge Inspectors assigned to more than one division.
(h) Supervisory forces above the rank of foremen.
(i) Teams and drivers, owners of teams, or men placed in charge of teams by owners.
(j) Any other employees (pending final decision) over whom there is jurisdictional dispute.
(k) Individuals paid less than ($30) thirty dollars per month for special service which takes only part of their time from outside employment or business.
(l) Division Gardeners."

RULINGS ON PETITIONER'S CONTENTIONS

It is undisputed that the car-cleaning work had been performed by section laborers for thirty (30) years prior to March 16, 1967, and that Claimants had performed the work for the last seventeen (17) of those thirty (30) years. It is also clear that the Scope Rule in question does not specifically reserve the disputed work to the complaining employees, but is of a type characterized as general in nature.

A host of Board decisions hold that, where such a general Scope Rule controls, the Petitioner, in order to prevail, must prove that the work in issue has been traditionally and customarily performed by covered employees on a system-wide basis to the exclusion of all other employees. This so-called "exclusivity" rule is based on the rationale that the Agreement covers an entire system in scope and application.

In the instant case the Petitioner did not offer evidence to prove "exclusivity" on a system-wide basis, and instead, chose to rely on several prior Board awards to support its contentions. We have studied these awards carefully, for, on their face, they would appear to support Petitioner's contentions. The awards cited by Petitioner do not stand alone, however, and, presently, the wide majority of awards have consistently upheld the "exclusivity" rule as asserted herein by Carrier.

In Award 13656 (Mesigh), for example, which involved the same parties, it was held that:

> "The Scope Rule of the Agreement is general in terms and the terms do not specify the work reserved to such employes. The Board has interpreted the Scope Rule between these same parties in Awards 12298, 11832, 11784, holding to the principle established by prior Awards of this Division that when the Scope Rule of the Agreement is general in form, the Petitioner has the burden of proving that the work is of a kind that has been historically, customarily and exclusively performed by the Carrier's section forces. Performance alone does not give the Claimants exclusive right to the work.

In Award 13694, also involving the same parties, it was held:

> The Scope Rule of the current agreement, which applies over the Carrier's entire system, fails to expressly reserve this work to the Claimants. It is urged by the Organization that past and prevailing custom and practice establishes in Section Forces the exclusive right to do the work described in the Statement of Claim. In order for the Claimants to prevail, they have imposed upon them the burden of proving by a preponderance of the evidence that Section Forces performed the service described to the exclusion of all other crafts not only at Jackson, Mississippi, but over the Carrier's entire system, and we find they have failed to meet the burden."

Under the foregoing and numerous other awards to like effect, no matter how clear-cut or long standing a local practice may be, the complaining employees must show a coincident system-wide practice in order to prevail under a scope rule hich is general in nature. Consequently, on the record before us, the Board can ot find that the Petitioner has not carried the burden of establishing that the disputed work has been exclusively performed by section laborers on a system-wide basis. Accordingly, we shall deny the claim.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.