

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19608
Docket Number MW-19546

Gene T. Ritter, Referee

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

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

(1) The Carrier violated the Agreement when, on April 27, 28, 29, 30, May 1, 11 and 12, 1970 it assigned or otherwise permitted Material Department employees to load rail and miscellaneous scrap (track) in Johnston Yard and South Yard, Memphis, Tennessee (System File T-72-T-70/Case 741).

(2) The Carrier violated the Agreement when, on June 30, July 1 and July 17, 1970 it again assigned or otherwise permitted Material Department employees to load rail and miscellaneous scrap (track) at Johnston Yard and South Yard, Memphis, Tennessee (System File T-68-T-70/Case 743).

(3) Mr. H. J. Smith be allowed 56 hours' pay at the burro crane operator's straight time rate and Mr. W. L. Humphrey be allowed 56 hours' pay at the section laborer's straight time rate of pay because of the violation referred to in Part (1) of this claim.

(4) Mr. H. J. Smith be allowed 24 hours' pay at the burro crane operator's straight time rate because of the violation referred to in Part (2) of this claim.

OPINION OF BOARD: On claim dates, Carrier assigned and used Material Department employees to operate a crane and hooking rail tongs in connection with loading rail and miscellaneous track scrap at Johnston Yard and South Yard at Memphis, Tennessee. The Organization in this dispute alleges that work of this character has been traditionally and historically performed by Carrier's Roadway Machine and Track Subdepartment forces. Carrier denies that the involved Scope Rule reserves this work to employees covered by the Maintenance of Way Agreement; that the Organization has failed in its burden of proving with a preponderance of evidence that the work claimed has traditionally been exclusively assigned to and performed by members of the Maintenance of Way Craft throughout the system. Carrier further contends that the claim is invalid for the reason that Claimants were unable to perform the claimed work for the reason that they were working at other tasks at the time the work was performed; and that the monetary claim is improper for the reason that Claimants were fully compensated on claim dates.

The record discloses that in handling this dispute on the property, the Organization failed to sustain its burden of proof of exclusivity. The Organization made many allegations and assertions to the effect that the involved work belonged exclusively to Maintenance of Way Forces. However, these allegations were not supported by probative evidence. The Carrier, in this instance, specifically denied the allegations that the involved work belonged exclusively to Maintenance of Way Forces; this denial was not rebutted by the Organization. The Scope Rule in this case is general in nature. There is no specific language in the Agreement which reserves the involved work to Maintenance of Way Forces. Therefore, the burden was upon the Organization to prove by probative evidence that the work claimed has been exclusively assigned and performed by Maintenance of Way employees in the past. Having failed in its burden of proof, this claim will be denied.

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.

A W A E F

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. H. K. Miller
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.