

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21701  
Docket Number MW-21422

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(Southern Pacific Transportation Company  
(Pacific Lines)

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

(1) The Carrier violated the Agreement when it assigned a Mechanical Department employe instead of a Water Service Sub-Department **employe** to unload diesel fuel at Dunsmuir, California on March 4, 11, 18, 25, April 1, 8, 15, 20, 26, 29, May 6, 13, 20, 28, June 3, 10, 17, 1974 and on subsequent dates (System Files **MofW** 152-793, **MofW** 152-796).

(2) Because of the aforesaid violation, Water Service Sub-department employe Virgil Sword be allowed nineteen and one-half (**19-1/2**) hours of pay at his straight-time rate for March 4, 11, 18, 25, April 1, 8, 15, 26, 29, May 6, 13, 20, 28, June 3, 10, 17, 1974; two hours and forty **minutes** of pay at his time and one-half rate for April 20, 1974 **and** pay at his appropriate rate for a number of hours equal to the total expended by the Mechanical Department in performing such work on subsequent dates.

OPINION OF BOARD: **On** March 4, 1974, and each of the dates for which claim is made herein Claimant was assigned to the position of Water Service Mechanic, Class A, with headquarters in **Dunsmuir**, California, in the Western Seniority District on the Oregon Division of Carrier.

At **Dunsmuir**, California, diesel locomotives are fueled by Mechanical Department **employees** directly from fuel tank cars that are placed on a storage track in the yard. A snorkel with connecting fuel line is inserted into the top of the tank car and the fuel is pumped out when needed. Loaded fuel tank cars are spotted on the storage track late one day of each week and empty **tank** cars are switched out **on** another day. These switching movements require having an **employe** available to **connect** the fuel lines onto the incoming full tank car loads and disconnect and remove the fuel lines on empty tank cars before they are removed from the storage track. This work, **performed** twice a week, coincidental with the delivery and removal of tank cars, prior to the date of claim had been performed at **Dunsmuir** by **employees** assigned to a Water Service gang with headquarters at **Dunsmuir**. Prior to January 14, 1974, Claimant has been assigned to **connect** and disconnect the fuel lines from tank cars at **Dunsmuir** as above described. **On** January 14, 1974, Carrier's Assistant **Trainmaster** assigned this work to the Roundhouse Foreman at Dunsmuir.

It is the position of the Organization that under the Agreement this work at **Dunsmuir** was its exclusive jurisdiction. They assert:

"the scope rule explicitly includes pumpers of fuel oil and water. The parties carefully spelled out the extent and the limitations of the work which is **allocated** to a scope-covered **pumper**. Said pumpers thereby have the exclusive right to perform the work of pumping fuel oil and the work of pumping water -- no more and no less." (Underlining the Organization's)

The Carrier took three positions, two procedural and one to the merits. Speaking to the first procedural question the Carrier requested notice of this proceeding be given to American Railway **Supervisors** Association and the International Brotherhood of Firemen and Oilers. Such notices were given. The American Railway Supervisors Association indicated they had no interest in the dispute before the Board. The International Brotherhood of Firemen and Oilers made a submission which is not pertinent to this dispute which involves specific work at **Dunsmuir**, California, which the International Brotherhood of **Firemen** and Oilers do not and have not handled at that place. The Claim before us is quite specific involving specific work at a specific location. It is the Board **opinion** this matter is properly before it.

The second procedural object is the claim here consists of two **separate** claims with the same cause of **complaint** and was not **properly** h&led on the property. We do not so find, (See Third **Division Awards** 12424, 14412, 15383).

The Carrier position on the merits is:

"It is Petitioner's contention that Rule 1--Scope, Rule **2--Sub-departments**, Rule **3--Classes** and Rule **5--Seniority** support the claim in that respect. These rules state as follows:

**"RULE 1--SCOPE**

"These rules govern rates of pay, hours of service, and working conditions of employes in **all** sub-departments of the Maintenance of Way and Structures Department (not including supervisory employes above the rank of foreman) represented by the Brotherhood of Maintenance of Way Employes, such as:

\* \* \*

"(d) Pumping engineers and pumpers (fuel oil and water).

\* \* \*

#### "RULE 2--SUB DEPARTMENTS

"It is understood that the following sub-departments shall be established within the Maintenance of Way and Structures Department:

Track Sub-department  
Bridge and Building Sub-department  
Water Service Sub-department  
System Work Equipment Sub-department  
Track Welding Sub-department

"Any other **sub-department** that may hereafter be established **shall** be by negotiation between the General Chairman and the Management.

#### "RULE 3--CLASSES

"Each occupation in the several sub-divisions **shall** constitute a class, and be listed by class in numerical sequence, the lowest number designating the highest class and the highest number designating the lowest class. Such sequence shall be determined by Section (f) of Rule 26. Any existing occupation now covered by the current agreement, which is not listed in Section (f) of Rule 26, shall constitute a class and be assigned to the proper sub-department, and shall be subject to inclusion the **same** as though it were listed.

"Not later than 10 days following the establishment of a new class and rate of pay in accordance with the provisions of Article III of the October 7, 1959, Mediation Agreement (see Appendix A), the General Chairman of the organization will be furnished notification thereof. It is agreed that any award which might be rendered in accordance with paragraph (c) (5) of the October 7, 1959, Agreement will be applied retroactively to the date new class and rate was established.

"RULE 5--SENIORITY

"Seniority Established and Confined to Sub-Department.--  
(a) Seniority rights of all employes are confined to the sub-department in which employed. Seniority of employes in all sub-departments shall be shown by classes and each occupation shall constitute a class. Each class shall be listed in numerical order beginning with number one (1), which shall designate the highest class, and the highest number shall designate the lowest class.

"Seniority in the classes of laborers and helpers shall begin at the time an **employee's** pay starts in that class. Seniority in all other classes shall begin as of the date the employee is assigned by **assignment** notice to the class or as of the date that he qualifies for a class under the provisions of Rule 8 of this agreement.

"Seniority Districts--(b) Seniority rights of employes in the B&B, Water Service and Track Sub-departments shall be restricted to districts having boundaries as follows:

"OREGON DIVISION

1. Eastern District

MP 770.40 Portland  
**MP** 430.79 east of Ashland  
**MP** 527.00, west of Crescent Lake

2. Western District

MP 319.61, west of **Dunsmuir**  
MP 430.79 east of Ashland  
MP 527.00, west of Crescent Lake  
**MP** 336.46, on line to Fernley west  
of Flanigan  
MP 336.33, connect to W.P.R.R. for  
Bridge Track Operation.

\* \* \*

"Seniority districts established by this rule will be changed only by agreement.

"System Work Equipment, Track Welding.--(c) Employes in the System Work Equipment and Track Welding Sub-departments shall have system seniority.

---

"System Steel Gangs.--(d) Employees assigned to the Track Sub-department System Steel Rail Laying Gang and the Bridge and Building Sub-department Steel Gangs shall retain and accumulate seniority in their respective sub-departments and classes on their home seniority districts.

"Composite Positions.--(e) When composite positions and wage rates are established, they shall be established by agreement between the Management and the General Chairman."

\* \* \*

"None of the foregoing agreement provisions cited by Petitioner establish any particular arrangement or method designating how work should be performed or what work is reserved to employees covered by those rules. Dealing **with** the Scope Rule, which is general in character and which lists positions instead of delineating work, it is a principle well established by this Division that a valid claim to disputed work under such a rule must be determined from history, tradition and custom, system-wide, from which it can be established that the employees making claim have exclusively performed the work. Further the burden of proof of such exclusivity throughout Carrier's property rests with the party making the claim. See Awards 5702, 7583, 7806, 8831, 9565, 9602, 10080, 10389, 11054, 11129, 11581, 11846, 11847, 12774, 12972, 13161, 13364, 13579, 14022, 14159, 16068, 17943, 17961, ~~17962~~, 19190, 19761, ~~and 20421~~, all of which involve **interpretation of the Scope Rule** here in issue." (Underlining the Carriers)

The other pertinent rule in this dispute is Rule 26, parts of which are as follows:

"RULE 26--BASIS OF COMPENSATION

"Included in Agreement.--(a) The rates of pay of employees covered by this agreement shall be listed in a master wage schedule included herein (See Mediation Agreement of October 7, 1959, Appendix A).

"Position Omitted.--(b) Any established position and rate of pay which may have been omitted shall be recognized and included in this agreement.

---

"Rates Paid.--(c) Employees shall be paid a monthly **or, hourly** rate of pay.

**"Montly-Rated** Positions.--(d) Employees filling monthlyratedpositions shall be compensated on a monthly rate based on **175-1/3** hours per month. The monthly rate shall **apply in** each month regardless of its working hours.

"In event less than a month is worked or a month's work is split between two or more employes on the same job carrying a monthly rate, compensation due shall be figured pro rata on the regular working hours in the month concerned.

"Determining Hourly Rate.--(e) To compute the hourly rate of monthly rated employes, divide the monthly rate by **175-1/3** hours.

(f) **CLASS AND WAGE SCHEDULE**

\* \* \*

"Water Service-Sub-Department

No.	Class	Basic Rate Effective 1-1-74		
		Monthly Rate	Hourly Equivalent	Hourly Rate
	* * *			
11	<b>Pumpers.....</b>			4.5821
	<b>!Water</b> Service			
	Mechanic			
	(Welder).....			5.3665
	Student			
	Foreman.....	946.50	5.3983"	

The cause of the complaint was the unilateral removal of specific work from assignment by Claimant, who the Carrier admits on the record had performed the work at the point and location.

The Carrier asserts it is, under the Agreement, its prerogative to assign this work to someone outside unless under the Agreement it can be shown under the Scope Rule alone that jurisdiction of disputed work must be determined from "history, tradition and custom, systemwide" the work is exclusively the Organization's "exclusively throughout Carrier's property" (underlining Carrier's). The Board does not interpret' the Agreement or the

Awards so narrowly for to do so would leave a part of the agreement of great importance without meaning. We agree:

"In determining the ultimate question as presented herein, the Agreement must be read as a whole, and any interpretation obtained, should if possible, be consistent with the rest of the agreement." (Third Division Award 11165).

Reading the agreement as a whole, we have a comprehensive view of the work and the jurisdiction, the Agreement rules cover "Pumping engineers and pumpers (fuel oil and water)", Rule 1--Scope; sub-departments are defined including Water Service Sub-department, Rule 2--Sub-Departments, occupational classes were defined, Rule 3--Classes; seniority was defined and seniority districts established by Agreement including by definition the district in which the work at issue was performed, (Rule 5, Seniority); a basis of compensation with wage rates and class for 'Pumpers' was set forth, (Rule 26--Basis of Compensation).

• "Our function is to interpret and apply the Agreement in light of the peculiar fact of the record and not to expostulate and interpolate other Awards." (Third Division Award 13326).

Under this set of **facts where** it is admitted the work involved had been performed, traditionally and customarily by the Water Service **employees at** the location here involved to do other than rule this was the Organization's work and not transferable without agreement by the Organization would do violence to the Agreement.

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 violated.

Award Number **21701**  
Docket Number MW-21422

Page 8

A W A R D

Claims **sustained.**

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this **29th** day of **September 1977.**

