

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21904
Docket Number MW-21749

Robert W. Smedley, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(The Western Pacific Railroad Company

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

(1) The Carrier violated the **Agreement** when it assigned a **Mechanical** Department **employee** instead of a Water Service Sub-department **employee** to repair a diesel oil pipe riser at Oroville, California on January 30, 1975 (System File B-Case No. **10013-1975-BMWE**, Local Case No. 135).

(2) The Carrier further violated the Agreement when it assigned outside forces to repair the heating units in the Yard Office at Oroville, California on January 31, 1975.

(3) Water Service Maintainer George **Saraba** be allowed eight (8) hours of pay at his straight-time rate because of the violation referred to in Part (1) hereof and thirty-two (32) hours of pay at his straight-time rate because of the violation **referred** to in Part (2) hereof.

OPINION OF BOARD: Claim (1), the stand pipe **dispute**, turns on Carrier's assertion that an emergency existed. On January 30, 1975, a locomotive struck a tank car on the Oroville, California fueling track, causing a break and spill from a fuel stand pipe. This was within Claimant's responsibility and service area. He was available to perform the repair. Instead, the Carrier utilized a machinist.

The claim of emergency appears in Carrier's letter answers to the claim on the property. No particulars are given, no proof that an emergency actually existed. We are asked to presume an emergency situation. This **we cannot** do.

As **we** said in Award 20310 (**Lieberman**) quoting Award 13738:

"The record as made on the property **contains no** factual evidence to support Carrier's statement that there was an emergency. Whether or not there was an emergency is a

5

"conclusion which this Board can **find** only from facts. of record of probative value. Lacking facts, we must-'find that Carrier's defense of 'emergency' fails for lack of proof."

11 The-damages asked for violation of claim number (1) are reasonable and-necessary for proper enforcement of the Agreement. **Claim** (1) will be sustained.

5
12 Claim (2), the heating units repair, turns on the Union's effort to prove this work necessarily belonged to Claimant. The burden of proof has not been met in this regard. Although Claimant had **performed** **routine** maintenance and repair to the piping of these units, the evidence is that the outside contractor was called due to expert **knowledge**, equipment and parts for the repair, which involved electro-thermal components.

13 We quote from Award 20841 (Norris):

14 " * * * Basically, the Scope Rule and the Seniority Rules cited by Petitioner effectuate and protect the covered employees' rates of pay, promotions and seniority rights. This is a far-cry indeed from a Scope Rule which contains specific job description rules and specific reservations of particular work to a designated class or craft.

15 6 "We conclude, therefore, that the **instant** Scope Rule is non-specific and general in nature. In the latter context, we have held repeatedly that where the Scope Rule, as is the case here, is general in nature, **the Petitioner** has the burden of proving by a preponderance of evidence that the disputed work has traditionally and customarily been performed by Claimants (or the particular craft) on a system-wide basis to the exclusion of others 'including outside contractors'.

16 "See Awards 10389 (Dugan), 13579 (Wolf), 15383 (Ives), 15539 (McGovern), 16609 (**Devine**), 18471 (O'Brien), 18935 (Cull), 19576 (**Lieberman**) and 19969 (**Roadley**), among a host of others.

17 "The record fails to establish that Petitioner has submitted probative evidence sufficient to bring the **disputed work** within the exclusivity concept governing Scope Rules which are general in nature, as above set forth."

18 Likewise, here we are dealing with a general scope rule,. Claim (2) 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 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

The Agreement was violated in accordance with Opinion.

A W A R D

Claim (1) is **sustained**.

Claim (2) is denied.

Claim (3) is sustained for eight (8) hours.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at **Chicago, Illinois**, this 15th day of **February** 1978.