NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22943

THIRD DIVISION Docket Number m-22236

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(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 System Grading and Work Equipment Operator A. J. Hood instead of Bridge and Building Pile Driver Engineer J. Cravens to operate Crane #89 in connection with bridge work at Pleasant Grove, California on February 17, 19 and 20, 1976 (System File B-Case No. 10532-1976-BMWE, Local Case No. MW&S 171).

(2) Bridge and Building Pile Driver Engineer J. Cravens be allowed twenty-four (24) hours of pay at his straight time rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: At the time of the incident in question, Claimant J. Cravens was assigned to the position of Pile Driver Engineer within the Bridge and Building (B&B) Sub-department. He was part of a B&B gang assigned to repair two of Carrier's main line bridges. The claim at issue stems from Carrier's assignment of a locomotive crane to assist the B&B gang with work on a bridge at Pleasant Grove, California on February 17, 19 and 20, 1976. The crane was operated by one A. J. Hood, a System Grading and Work Equipment Operator. Mr. Hood is an employe in the System Grading and Work Equipment Sub-department to which the locomotive crane is assigned. The work performed consisted of unloading stringers, caps, ties, and walkway planks on February 17 and unloading and placing "cobbles" on February 19 and 20. The work required twenty-four (24) hours to complete.

The Organization filed a claim on behalf of Claimant to recover the twenty-four (24) hours' pay for the work described which, the Organization maintains, was erroneously assigned to Mr. Hood rather than to Claimant. The claim was timely and properly presented and appealed. The claim was denied at each step on the property and is properly before the Board for consideration.

By a Memorandum of Agreement executed March 31, 1955, a class of Locomotive Crane Operator was established in the System Grading and Work Equipment Sub-department. The current seniority rosters (as of January 1, 1977)

show a class of Locomotive Crane Operator only in the System Grading and Work Sub-department roster. No such class is shown in the B&B Sub-department roster, nor has there been since 1973, when the last of the five employes who held such seniority retired from the service of Carrier.

The Organization bases its claim on its assertion that the work performed by A. J. Hood is rightly the work of B&B Sub-department employes. Crane Operator Hood has no seniority in the B&B Sub-department and therefore, the Organization argues, had no claim to the work he performed on the dates cited.

Despite the Organization's emphasis on the matter of relative seniority, that issue is subrogated by the issue of whether the work performed was the exclusive province of the B&B Sub-department. The present situation may be distinguished from that described in our Award 3-20412 cited by the Organization. In that case we were confronted with clear and unambiguous contract language reserving to Maintenance of Way Employes the work at issue. By contrast no such specific Scope Rule is included in the Agreement *in* the present case. Absent clear and unambiguous contract language, therefore, the burden is upon the Organization to show exclusive assignment to B&B employes of the work in dispute through probative evidence of past custom, practice and tradition of performance on a system-wide basis. Upon consideration of the record in its entirety we find no evidence to indicate that the work performed by the locomotive crane was in whole or part so reserved exclusively to B&B Sub-department employes. (See Awards 3-13517 and 3-19158.) The Organization as moving party has the burden of proof on this point, and, accordingly, the claim must be dismissed. This decision is restricted to the facts of record in the present case.

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

Claim dismissed for failure to meet burden of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: R. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 15th day of August 1980.