NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25444

THIRD DIVISION

Docket Number MW-25410

M. David Vaughn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Agreement when it assigned Mechanical Department employes to perform Bridge and Building Department work on the "old Service Building. at Kansas City, Kansas March 15 through March 19, 1982 and on April 26 and 27, 1982 (System File SSW-O-467).

(2) Because of the aforesaid violation, B&B Foreman L. V. Wooley and Bridgemen L. R. Seymour, K.R. Kennicott and V. D. Wooley shall each be allowed forty-eight (48) hours of pay at their respective rates.

OPINION OF BOARD: The Organization, on behalf of four named Claimants, makes a claim for pay for time lost as a result of the Carrier's assignment of certain carpentry-related work at Kansas City, Kansas to nechanical Department employes.

On March 15 through 19, 1982, the Carrier assigned Mechanical Dspartment employes to build a wooden floor over a service pit, construct plywod walls and frame and hang a door in the old Service Building. On April 26 and 27, 1982, the Carrier assigned the same Department the work of hanging outer steel doors on that building.

The Organization filed a claim for pay for the work, which the Carrier declined. The claim was then brought to this Board.

The Organization asserts that employees in the Bridge and Building Craft have exclusive jurisdiction over the work in question. As the contractual basis for its claim, the Organization points to Article 1, Section 1 of the applicable Agreement, which states in relevant part:

> "These rules govern rates of pay, hours of service and working conditions of all employees in the Maintenance of Way and Structures Department...represented by the [Organization] as follows:
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> Bridge and Building Department:
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> Foremen, Assistant Foremen, Mechanics, Carpenters, Painters....

The Organization asserts that, by specifically including in the Scope Rule the named occupations, the parties gave to employes covered by the Agreement exclusive jurisdiction over work within the common understanding of the duties of each of those occupations. The Organization asserts further that, by excluding Mechanical Department positions from the Agreement, employees in those positions were not intended by the Agreement to have jurisdiction over work covered by it.

The Carrier asserts that the cited Scope Rule is general, citing positions but not work, and, as such, requires a showing by the Organization on the property that the work in question has, historically and on a system-wide basis, been performed exclusively by the employes on whose behalf the work is claimed. The Carrier asserts that the burden of proof of exclusivity lies with the Organization. It points out that the Organization introduced no evidence on the property to support its assertion of jurisdiction, but relied instead on conclusory statements.

The Carrier further asserts that the disputed work, while consistent with the general duties of some employes covered by the Agreement, was not historically performed exclusively by the Bridge and Building Department in facilities occupied by Mechanical Department employes. The Carrier cited in its handling of the claim on the property correspondence indicating that mechanical Department employes had performed similar work in the past, although the correspondence is of limited evidentiary value because it relates primarily to claims filed and later abandoned.

The Board concludes that, in the case of so-called general Scope Rules, exclusivity is determined by a review of the manner in which the work has been performed in the past. See, e.g., Third Division Awards 10389 ("Under such a general rule most of the decisions of the Board hold that the question whether exclusive jurisdiction is conferred depends on tradition, historical practice and custom."). The burden of establishing exclusivity lies with the party asserting it. See, e.g., Third Division Award 14507. The Board holds that, in this case, in which such a Rule forms the contractual basis for the claim, the Organization failed to meet its burden. Indeed, some evidence in the record suggests that the work was not performed exclusively by the Craft on whose behalf the work is claimed. Accordingly, the claim must be, and it is, 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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.