NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26548

THIRD DIVISION Docket Number SW-26326

Elliott H. Goldstein, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company (Western Lines)

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

(I) The Agreement was violated when the Carrier assigned various Track Subdepartment employes instead of Mr. E. J. Vargas to drive Crane SPO-120 in the vicinity of Lincoln and Roseville, California from October 12 through November 4, 1982 (Carrier File MofW 152-966).

(2) As a consequence of the aforesaid violation, Mr. E. J. Vargas shall be allowed sixty-eight (68) hours of pay at the crane helper's straight time rate and two and one-half (2 1/2) hours of pay at the crane helper's time and one-half (I 1/2) rate."

OPINION OF BOARD: The Organization claims that Carrier violated the Agreement, specifically Rules 1, 2, 3, 5, 6, 12, 13 and 16 when, on October 12, 1982, and continuing thereafter, various employes of the Track Sub-department were called to drive Crane SPO-120 at Lincoln and Roseville, California, and to perform various types of work normally performed by employes of the System Work Equipment Sub-department. Claimant established and holds seniority rights in the System Work Equipment Sub-department. On October 11, 1982, Claimant's position as Helper on Crane SPO-120 was abolished, and Claimant exercised his seniority rights by displacing a junior helper on Unit SPO-127 at Oakland, California. The Organization contends that, beginning on October 12, 1982, and subsequent thereto, Track Sub-department employes were assigned to "drive and perform other duties and functions customarily, historically and traditionally performed by Helpers within the System Work Equipment Sub-department...." The Organization also specifically relies upon Rule 12, captioned "Vacancies," arguing that Claimant, as an employe holding seniority in the System Work Equipment Sub-department, was clearly entitled to fill the temporary helper vacancy.

Carrier denies that it has violated the Agreement. It contends that there is nothing in the rules guaranteeing Claimant the exclusive right to the work in question. Carrier further argues that there is scarce evidence of what work was actually performed, let alone that the work was performed exclusively by Crane Helpers. Finally, assuming, arguendo, that a violation is found, Carrier submits that no monetary compensation is due Claimant since he was fully employed at all relevant times.

In reviewing this case, the Board concurs with Carrier's position. The basic issue herein is whether the disputed work belongs exclusively to Crane Helpers. In the absence of clear Agreement language that specifically reserves identifiable work to members of the Organization, the Organization is obligated to show by reference to systemwide past practice that the work has historically been performed by covered Agreement employes. See, e.g. Third Division Awards 25693, 25409, 25077. In the instant case, there is nothing in the Agreement which reserves the work at issue to the classification herein. Therefore, it was incumbent upon the Organization to prove that a past practice existed, since, as noted, the Agreement does not guarantee the assignment to Claimant. What this Board said in Third Division Award 20425 is applicable here :

> "It is well established that Claimant must bear the burden of proving exclusive jurisdiction over work to the exclusion of others. This Board has also found that when there is a jurisdictional question between employees of the same craft in different classes, represented by the same Organization, the burden of establishing exclusivity is even more heavily upon Petitioner. (Awards 13083 and 13198)."

We must conclude that the Organization has failed to meet its burden here. Moreover, though the Organization cited Rule 12 in support of its Claim, it was not shown or established that a temporary vacancy existed. In any event, this Board has held that it must be determined first that the disputed work comes under the purview of the Scope Rule before other rules, such as Rule 12, can be considered. (See Third Division Awards 17003, 15943 and 17943). Since an exclusive right to perform the disputed work has not been established in the first instance, we will not consider other Rules of the current 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 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 September 1987.