

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34992
Docket No. MW-31042
00-3-92-3-789**

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Water Service Mechanics R. Carroll, T. Krause and G. Del Bedosque to perform machine operator’s work (operate a shovel dozer and a cut-off backhoe tractor) on the east end of Kirby Yard from August 19 through September 10, 1991 (System File MW-91-140/504-20-A SPE).**
- (2) As a consequence of the aforesaid violation, furloughed Machine Operators S. P. Resendez and G. Leos shall each be allowed one hundred thirty-six (136) hours, pay at their respective straight time rate and they shall be credited with seventeen (17) days for vacation qualifying purposes.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As Third Party in Interest, the Sheet Metal Workers' International Association was advised of the pendency of this dispute and chose to file a Submission with the Board.

This case involves a claim by the Organization that the Carrier violated the Agreement when it assigned Water Service Mechanics represented by the Sheet Metal Workers International Association, instead of Maintenance of Way Employees holding seniority in the Roadway Machine Department, to operate a shovel dozer and backhoe to dig and level a holding pond at the east end of Kirby Yard. The Organization asserts that the assigned work belongs to Roadway Machine Department forces, and that the Carrier, therefore, should have recalled and assigned the work to the Claimants, each of whom had customarily performed such work prior to being furloughed.

The Organization argues that the Carrier failed to support its opposition to the claim with any statements from Water Service Department employees that they have customarily and traditionally performed Roadway Machine Operators' work. It asserts that there is no evidence that Water Service Department employees have performed the disputed work other than on an incidental basis. Accordingly, the Organization maintains that all work involving the operation of roadway machinery accrues to employees who have established and hold seniority in the Roadway Machine Department. The Organization therefore asserts that the Claimants are entitled to be compensated for the 272 hours expended by the Water Service Mechanics who performed the disputed work.

The Carrier, on the other hand, asserts that the work of digging a pond in connection with the construction of a facility to store and treat contaminated soil is the responsibility of the Water Service Department, and that all tasks germane to this project were properly performed by Water Service Department employees. The Carrier argues that the Organization failed to sustain its burden of proving by a preponderance of evidence that the disputed work is within the purview of the Scope

Rule and has been customarily, historically, traditionally and exclusively reserved to the Maintenance of Way Employees.

After carefully reviewing the record evidence, we have determined that the claim must be rejected. It is clear that the Scope Rule is general in nature. That is, the Rule does not specifically cover the work in dispute. Thus, to sustain its claim, the Organization must establish its exclusive right to this work by custom, tradition and practice on a system-wide basis.

The Organization failed to meet this burden. While it proved that Roadway Machine Department employees regularly operate backhoes and dozers such as were utilized in this case, it has not shown that they did so to the exclusion of all others.

In this regard, we note that the Third Party response of the Sheet Metal Workers International Association includes unrefuted evidence that for more than 20 years Water Service personnel operated backhoes, dozers and other machinery on work pertaining to Water Service Department projects.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of September, 2000.