

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC R. R. CO.

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

(1) That the Carrier erred when, under date of January 3, 1946, it advertised a vacancy as operator on Crane X-17 to employees represented by the Brotherhood of Railway Clerks;

(2) That the Carrier erred when it allocated the work of firing Crane X-78 to employees represented by the Brotherhood of Railway Clerks;

(3) That the position of operator of Crane X-17 be advertised and awarded to employees represented by the Brotherhood of Maintenance of Way Employees;

(4) That any employee represented by the Brotherhood of Maintenance of Way Employees who was required to suffer a wage loss or who was otherwise adversely affected by reason of the Carrier allocating the work of operating Crane X-17 and firing Crane X-78 to employees represented by the Brotherhood of Railway Clerks be allowed a monetary adjustment in the amount of wage loss suffered or for expenses incurred by reason of not being permitted to fill the position to which he was entitled by reason of his seniority.

EMPLOYEES' STATEMENT OF FACTS: The claim in this case concerns whether or not the Carrier has the right to remove from under the jurisdiction of the Brotherhood of Maintenance of Way Employees certain work which has been performed by employees represented by the Brotherhood of Maintenance of Way Employees for a period of more than twenty-five years. More than twenty-five years ago the Carrier purchased and put into operation at Tacoma a steam crane identified as No. X-78. This crane has been operated by employees of the Maintenance of Way Department continuously since the first day it was put into operation.

When the position of fireman on Crane X-78 became vacant, the Carrier assigned an employee covered by its agreement with the Brotherhood of Railway Clerks to the position of fireman. Early in January, 1946, the Carrier placed into operation a crane identified as No. X-17. This is a gasoline powered crane and the position of operator of this crane was bulletined to employees represented by the Brotherhood of Railway Clerks. The work performed by this crane is identical to the work performed by X-78. The only difference in the two machines is that X-78 is a steam powered, larger crane, and the X-17 is a gasoline driven smaller crane. However, the nature of the work performed by both the X-78 and the X-17 is identical.

3. The Third Division of the National Railroad Adjustment Board is without jurisdiction to take this work from the Clerks' Organization and give it to the Brotherhood of Maintenance of Way Employees. See also Third Division Award No. 3368 in which Referee Messmore participated.

OPINION OF BOARD: In 1923 the Carrier placed in operation in its Tacoma Store Department a steam locomotive Crane X-78. An Ordinance of the City of Tacoma made it necessary to have a licensed operator. The Store Department did not have an employee qualified to operate the crane. On April 21, 1923, William Wagner, a qualified locomotive crane operator in the Operating Department was employed to operate Crane X-78 in the Store Department and continued to operate it until January 1, 1946, when he retired. There was still no employee in the Store Department qualified for this position and again the Operating Department was asked to furnish a man which it did by issuing a bulletin to work equipment employees and the position was assigned to A. E. Porter, a work equipment employee, pursuant to that bulletin. Both Wagner and Porter while working on this crane were carried on the payroll and the Seniority Roster of the Store Department with a seniority date corresponding to the date they were assigned to the position. However they were also carried during the same time on the seniority roster of the Roadway Equipment Employees who had been covered by the Maintenance of Way since 1934.

In February, 1947, the Carrier placed another crane in operation in the Tacoma Store Department, a small gasoline crane, No. 17. It was not necessary for the operator of this type of crane to have a city license and a qualified employee of the Store Department was assigned to operate it.

The Organization contends that since a Maintenance of Way employee had been used to operate Crane X-78, the work of operating it became Maintenance of Way work; that Crane X-17 did the same type of work and part of the work which had been done with Crane X-78; and that, therefore, the work of operating Crane X-17 also belonged under the Maintenance of Way Agreement and should also have been assigned to a Maintenance of Way employee.

The Maintenance of Way Agreement provides in its Scope Rule that:

"The rules contained herein shall govern the hours of service, working conditions, and rates of pay of the employees in the Maintenance of Way & Structures Department. . . . These rules do not apply to employees covered by other agreements."

The Clerks' Agreement had been considered for years as covering the work of operators of cranes used exclusively in the Store Department and such positions were expressly included by name in the Clerks' Agreement which became effective January 16, 1946.

While so occupying the position in the Store Department neither Wagner nor Porter were "employees in the Maintenance of Way & Structures Department." Both were placed on the Store Department payroll and seniority roster. The fact that they were permitted to retain their positions on the Maintenance of Way seniority roster would not take the work of the position in the Store Department out of the Store Department and place it in the Maintenance of Way & Structures Department nor bring the work within the Scope Rule of the Maintenance of Way Agreement.

The claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees 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 Carrier did not violate the Agreement as claimed.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1948.