

**Award No. 4754**

**Docket No. MW-4305**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Charles S. Connell, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE DELAWARE AND HUDSON RAILROAD CORPORATION**

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

(1) That the Carrier violated the provisions of the current working agreement between The Delaware and Hudson Railroad Corporation and the Brotherhood of Maintenance of Way Employees when it allocated on January 31, 1945, the work of making repairs to a sand stove at Binghamton to employees of the Motive Power Department;

(2) That the four (4) senior Plumbers working on the Susquehanna Division be allowed eight (8) hours pay each at the overtime rate by reason of not being allowed to perform this work to which they should have been assigned because of their seniority.

**EMPLOYEES' STATEMENT OF FACTS:** On January 31, 1945, four (4) employees of the Motive Power Department were assigned by the Carrier and did perform the work of making repairs to a sand stove located at Binghamton, N. Y. These referred to employees worked 8 hours each on this assignment or a total of 32 man hours.

Heretofore, work of this type has always been performed by Plumbers working in the Maintenance of Way Department and under the Maintenance of Way Agreement.

There were four plumbers on the Susquehanna Division available for this assignment on January 31, 1945, and could have performed this work if the Carrier so directed.

The Agreement between the parties to this dispute, dated November 15, 1943, and subsequent memorandums are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** The Scope Rule of the effective Agreement states as follows:

"The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employees in any and all sub-departments of the Maintenance of Way and Structures Department represented by the Brotherhood of Maintenance of Way Employees, except:

Employees and is not generally recognized as the work of Maintenance of Way Employees. On the contrary, the work performed in this case is covered by the Scope Rule of the Shop Craft Agreement and is generally recognized as Boilermakers' work.

(Exhibits not reproduced).

**OPINION OF BOARD:** The particular item of work involved in this dispute was that of making repairs to a sand stove at Binghamton, New York on the date in question by Boilermakers who are not employees covered by the Agreement between the parties. The claimants allege that the repair of sand stoves is maintenance work and covered by the Scope of their Agreement. The Carrier denies that allegation and states that such work is work properly covered by the Scope of the Boilermakers' Organization. The Carrier states that this is a jurisdictional dispute between the Claimant organization and the System Federation No. 35, A.F. of L., representing Boilermakers, and that it is not properly before this Board because the National Mediation Board had assumed jurisdiction of a representation dispute involving plumbers employed in Maintenance of Way Department. This Division now, however, can take note of the fact that said representation dispute, identified as Case No. 4-1857 before the Mediation Board, has been acted upon and was dismissed without prejudice by the National Mediation Board on May 5, 1949. The instant dispute is, therefore, relegated to its original status before this Board.

The Scope Rule does not set forth the work to be encompassed in the Agreement. However, there is no doubt that the sand handling facilities of this Carrier are, in the main, classified as structures and, as such, properly come under the Scope of the Maintenance of Way Agreement. The Carrier does not dispute that general statement but alleges that this claim is based on work of making repairs to the sand stove at Binghamton, and that said stove is not an integral part of the sand handling facilities, that it is work coming within the Scope of the Boilermakers. The Carrier has stated that such work has been performed by boilermakers at Binghamton for a number of years, and have submitted as an Exhibit an affidavit of the Boilermakers' Inspector, stating that on March 11 and 12, 1942, he renewed screen on sand stove hopper, and on November 4, 1942, he repaired sand stoves at Binghamton. Also, an affidavit stating that on January 31, 1945, the date upon which this claim is based, and on subsequent dates, he renewed said sand stove. It is obvious that the work upon which this claim is made, and any subsequent work of like character, cannot be considered as evidence of custom and practice prior to this claim. The Employees have stated as evidence of custom and practice on this Carrier, that in 1941 the claimant employees constructed additional sand handling facilities at Oneonta, New York; that during the period March 8 to December 30, 1944, the same forces constructed a new sand handling plant at Binghamton, New York. The Carrier states that these examples are not evidence of prior custom and practice since they relate to sand handling facilities or plant, and are not directly related to the sand stove. As stated in a companion case, Award No. 4753, a dispute between the same parties, that to determine whether work comes within the Scope of an Agreement, it is necessary to consider the character of the work as a whole and not to break it down into its component parts. There is no question that the Employees were entitled to the work of repairing the sand handling facilities at Binghamton. The purpose of these facilities is primarily to heat sand and, in our opinion, the sand stove is an integral part of that structure or facility. It, therefore, follows that the work of repairing the sand stove was work encompassed in the Scope of the Employees' Agreement, and for Carrier to assign said work to Boilermakers was a violation of said Agreement, and this claim will be sustained at pro rata rate.

**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 violated the Agreement.

**AWARD**

Claim sustained at pro rata rate.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST: A. I. Tummon**  
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1950.