

Award No. 4848

Docket No. MW-4798

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

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

(1) That the Carrier violated the Agreement by assigning to Mechanical Department Forces effective June 28, 1945 the pumping of Diesel fuel oil at Hoisington, Kansas;

(2) That this work be returned to the Pumpers in the Maintenance of Way Department and the necessary adjustments be made in favor of any pumpers who have suffered the loss of seniority by this violation of the Agreement.

EMPLOYES' STATEMENT OF FACTS: On or about November 12, 1942 the Carrier installed at Hoisington, Kansas, Diesel oil tanks and pumps for the purpose of fueling its Diesel locomotives. Also, in November of 1943 the Carrier installed at this same point, Hoisington, Kansas, locomotive fuel oil tanks and pumps for the purpose of fueling its locomotives. During the period from November 12, 1942 to June 28, 1945 the Carrier assigned the operation of these fuel pumps and the maintenance of the pipe lines connected with such pumps and tanks to the Water Service Repairmen and his Helper at this point.

These Water Service employees are under the scope of our Maintenance of Way Agreement with this Carrier. However, effective June 28, 1945 this Carrier arbitrarily and without negotiation re-assigned the work described above to employees in the Mechanical Department represented by the Sheet Metal Workers. Subsequent to June 28, 1945 the practice in handling the Diesel and fuel oil at Hoisington is as follows:

The Mechanical Department pipe fitter and helper connects up and disconnects pipes between the tank car to be unloaded and the pumps. The Shop Laborer not represented by the Brotherhood of Maintenance of Way Employees operates the pumps for the unloading of this Diesel and fuel oil into the storage tanks. The oil is then loaded into the locomotives from these storage tanks.

Subsequent to June 28, 1945 the Carrier had been requiring these Mechanical Department forces on two shifts at this point to perform this referred to work. Sometimes, if needed, employees on the third shift are required to perform this work.

It is the position of the Carrier that pumpers were originated for the primary purpose of producing water; that when included in the scope of the agreement with the Brotherhood of Maintenance of Way Employees pumpers were producers of water only, and that the pumping of oil at that time was not work being performed by pumpers who were placed under the scope of the agreement with the maintenance of way employees.

The claim is not supported by rule or by practice. The claim is indefinite and has not been made to the Board as presented on the property. It should, therefore, be denied in its entirety.

(Exhibit not reproduced.)

OPINION OF BOARD: On or about November 12, 1942, Carrier installed Diesel oil tanks and pumps at Hoisington, Kansas. In November, 1943, Carrier also installed locomotive fuel oil tanks and pumps. The Employees assert that until June 28, 1945, the Carrier assigned the operation of these fuel pumps and the maintenance of the pipe line and tanks used in connection therewith to a Water Service Repairman and his Helper. On the aforementioned date, this work was assigned to Mechanical Department forces. It is the contention of the Employees that this work belongs to pumpers under the Maintenance of Way Agreement.

The Scope Rule of the Maintenance of Way Agreement includes the following positions, among others: "Water Service Foremen, Assistant Foremen, Repairmen, Helpers, Laborers and Pumpers." It seems clear to us that at the time this rule was written that water pumpers alone were contemplated. The use of fuel oil for locomotives and Diesels was comparatively small at that time. The term Water Service Foremen, the first positions named, bears out this fact. It seems unlikely, therefore, that the parties contemplated anything more than water pumpers at the time the rule was negotiated. Standing alone, we would be compelled to hold that the Scope Rule, in specifying the positions of pumpers, was intended to include water pumpers only within its scope.

The Carrier points out that the pumping of fuel and Diesel oil has been assigned to various classes of workmen for the reason that it has never become the exclusive work of any. The Organization insists, however, that this work has been assigned to Maintenance of Way employees by the Carrier. It cites Carrier's Rule 440 fixing the responsibility of a Water Service Foreman. This rule provides in part:

"They are also in charge of and responsible for the safe, economical, and efficient installation, repairs, and maintenance of:

* * * *

(b) Gasoline, gas distillate, fuel, and other oil handling facilities.

(c) All pipe lines used for conveying water, oil, gas, steam, and air."

We think the placing of responsibility for the installation, repairs, and maintenance of gasoline, gas distillate, fuel and other oil handling facilities, with water service foremen places this work within the Maintenance of Way Agreement. Under the subject of "Water and Fuel Oil Stations" the Carrier in Rule 443 of its Rules and Regulations for the Maintenance of Way and Structures provides in part:

"They shall be thoroughly informed as to the type and operation of each station. They shall instruct each pumper as to the proper operation and care of all machinery and facilities at his station, * * *."

The foregoing rule would be a vain one unless water service pumpers were to operate and care for water and fuel oil stations. We think the Carrier has placed this work under the direct supervision of water service

foremen and thereby placed the work within the scope of the Maintenance of Way Agreement. Claim (1) will be sustained.

As to Claim (2), we hold that the work in question should be given to pumpers under the Maintenance of Way Agreement. We fail to see how any pumpers under the latter Agreement could suffer loss of seniority because of these improper assignments. If they have, any such lost seniority should, of course, be restored.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1950.

DISSENT TO AWARD 4848, DOCKET MW-4798

The record is clear that since the first Agreement with the Maintenance of Way Organization and since the first use of fuel oil, no pumper has ever been employed at Hoisington, Kansas, to pump fuel oil. No protest was ever recorded against the method of handling and the installation of facilities to handle Diesel oil in no way changed that situation. Further, the undisputed record shows pumpers under the Maintenance of Way Agreement have never been granted the exclusive right to pump fuel oil.

The Opinion concedes that the Scope Rule, standing alone, never contemplated such a situation of pumping fuel oil but relies entirely on Carrier's unilateral instructions in respect to the duties of Water Service Foremen, which instructions in no way assign the pumping of fuel oil to any particular craft. The unrefuted evidence as to the practice without protest since the first use of fuel oil has been ignored or set aside.

For the reasons stated, a denial of this claim was in order.

(s) A. H. Jones
(s) R. H. Allison
(s) C. C. Cook
(s) J. E. Kemp
(s) C. P. Dugan