Award No. 7349
Docket No. CL-7410

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that the Carrier violated the Clerks' Agreement at Muskogee, Oklahoma, on October 14, 15, 16 and 23, 1953:

(a) When it used the Section Foremen and Section Laborers to perform the work of unloading, sorting, stacking and loading out of track materials, and,

(b) That Mr. J. F. Toney, Warehouse Foreman, and George Reed and Horace Hazelton, Store Laborers, shall now be compensated for 121½ hours each at the punitive rate of their positions because of this violation, and,

(c) That all other Mechanical & Store Department employes affected shall be compensated in full for any other violations in handling of this track material subsequent to October 23, 1953 until such time as the handling of this track material is restored to the employes in the Mechanical & Store Department seniority district.

EMPLOYES' STATEMENT OF FACTS: For many years prior to October 14, 1953 there was maintained at the Mechanical & Store Department, Muskogee, Oklahoma, what was commonly termed the "B&B Yard", in which B&B Yard were kept track materials, rail and bridge timbers.

All the items of bridge material were loaded on cars in the B&B Yards for the Warehouse Foreman and Store Laborers and the cars switched to the Section Yard at Muskogee, Oklahoma, a distance of a few hundred feet away and right outside the Muskogee Shop grounds. The work of loading this material out was completed on October 14, 1953.

On October 14, 1953 the Section Crew spent a total of 44 hours unloading this material. On October 15, 1953 the Section Crews spent a total of 96 hours unloading, sorting and stacking this material. On October 16, 1953 the Section Crews spent a total of 40 hours sorting and stacking this material. On October 23, 1953 the Section Crew spent a total of 62½ hours loading out track material on a car to be shipped out on the line.

OPINION OF BOARD: At the time this dispute was docketed Carrier maintained at Muskogee, Oklahoma, a Mechanical and Stores Department which, for all practical purposes, is or was a General Store.

It appears from this and a related docket before us that the Store operation is one of ordering, receiving, storing, recording, charging out, and distributing, as needed, certain mechanical parts, and other materials and supplies, to different departments on the railroad.

The operation is staffed with certain positions and the work is performed by employes of the craft for which petitioner holds the contract, all as per agreement made and entered into by and between Carrier's Managing Officers and the duly designated Representative of its employes. For more on the obligation of contract and requirements of law in connection with these collective agreements see the Board's opinion in Award No. 7350.

As an adjunct to the Mechanical and Stores Department, the Carrier, for many years prior to October 14, 1953, maintained what commonly was termed the "B & B Yard" in which was kept track material, rail, and bridge timbers, when same were not shipped directly to an outside point, as ordered, for use along the line of road by section forces.

On or about October 14, 1953, all items of track material, rail, and bridge timbers in the "B & B Yard" were loaded on cars, and other details of handling were carried out by the Store forces, for movement a distance of only a few hundred feet where the section crew, not under the instant contract, subsequently handled in all the detail that such handling would have entailed if the material had been distributed out of the "B & B Yard" for use or storage along the line of road.

The "B & B Yard" thereafter was abandoned as a facility for receiving, storing, and handling of these stock materials, the tracks in that yard were removed, and all such material as that in question is now being handled for Carrier's purposes as roadway stock.

A claim has been progressed in accordance with law for and on behalf of the Warehouse Foreman and two store laborers, Mechanical and Stores Department, on the theory that a violation of contract occurred when Maintenance of Way forces performed the work of "unloading, sorting, stacking and loading out track materials" on October 14, 15, 16 and 23, 1953. Compensation is claimed for those named for 121½ hours at the punitive rate. Next, attempt is made to project the claim into the future on behalf of unnamed claimants from and after October 23, 1953, "until such time as the handling of this track material is restored to the employes in the Mechanical and Store Department seniority district."

An alleged violation of the scope and seniority rules of the Agreement is relied upon for a sustaining award.

We understand the Carrier defends on the principal theory that the method of handling converted material from that of store stock to roadway stock and that it is not under contract to have its work of handling roadway stock performed by others than those to whom the work was given in this instance.

At the Board level we were appropriately reminded, at the outset, that we are here dealing with an unusual scope rule and one that is only infrequently found in these Agreements. The pertinent part thereof reads:

> "(a) To the extent set forth in paragraph (e) of this Rule, these rules shall govern the hours of service and working conditions of employes engaged in the work of the craft or class of clerical, office, station and storehouse employes. Positions or work coming

within the scope of this agreement belong to the employes covered thereby and nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules,

* * * * *

except by agreement between the parties signatory hereto."

We have it on good authority that the Employes were compelled to resort to arbitration to get the protection they see in a rule that embraces both positions and work. They stress what is now stated in clear and unambiguous terms, as an obligation of contract, that "* * * nothing in this agreement shall be construed to permit the removal of positions or work from the application of these rules, * * * except by agreement between the parties signatory hereto."

Whatever else may have been behind the movement for a rules change on the property from which this dispute comes, the rule does not now admit of the hoary argument that the scope and other rules of the Agreement do not apply to work. See Award No. 7129.

Of course, it is a failure to agree on removal of work or whether in fact work was removed from the scope of Agreement that brings the dispute to our attention. Therefore, what concerns us most is whether, under the facts and circumstances of record, it was within the contemplation of the parties, when they contracted, that the work in question would be performed only by those for whom the instant contract was made.

For the purposes of this dispute, we see enough in the rules change to evidence an intent that when work is once put under the Agreement from whatever source it comes, that same work later cannot be removed "except by agreement between the parties signatory hereto."

The work that is the subject matter of these Agreements and reserved by the scope rules is class of work and not so much the manner, method, or detail for its performance. See Awards 864, 867, 1092, 3746, 4033, 4078, 4688, 5117 and 6448.

The undertaking by the Carrier to have its work performed by a given craft is binding, however, for only so long as there exists work against which the scope rule can operate; but that rule can be used for purposes of searching out the work so long as the class of work is in existence.

The theory that makes the work subject to contract is that Carrier has undertaken and agreed to have its work of a class performed by those of the craft with which it has contracted.

On the other hand, the Carrier may abandon its work at will and not be in violation of contract if the resulting reduction in force is carried out in compliance with the rules of Agreement.

The abandonment of work may take on the form of abolishing positions or even the abandonment of facilities in whole or in part, as was here done by taking up the tracks in the "B & B Yard". But in the end, we always are forced to inquire whether there has been an abandonment of work, or is that said to be an abandonment only a form of removal of work from the scope of the Agreement.

In Award 7168, this Board observed: "The disappearance of work for economic reasons is not a removal of work from the Agreement as we here use those terms", and then went on to sustain claims for what it found was a removal and not an "abolishment" of work.

As a general proposition, though, the Carrier's right to abolish positions under the Agreement when no longer needed in its service due to a disappearance of the work for which created is absolute. See Awards 4446, 4849.

In the instant case, however, complaint is not over abolishment of positions, but transfer of work. Where work embraced by the Agreement is transferred to employes not under the Agreement, claims will be sustained for what amounts to removal of work in violation of a binding and subsisting obligation imposed by contract that attaches to the work and its performance by those who hold the contract, unless the removal is by agreement or pursuant to cancellation in accordance with law. See Awards 1314, 2253, 3563, 5785, 5790 and 6141.

We find some proof in the record that, as long as the "B & B Yard" was located at the Mechanical and Store Department, the Maintenance of Way forces, on needing track material that was in store stock, for use and/or storage by roadway foreman along the line of road requisitioned same, whereupon the clerical employes at the "B & B Yard" loaded the track material and handled other details for shipment. Once the situs of the work changed and the track material lost its identity as store stock, the work of unloading and stacking along the line of road, for storage or immediate use, or for further distribution along the line of road, always has been the work of section forces pursuant to another Agreement with Carrier.

The foregoing work procedures were, however, part of a well defined program for track maintenance and repair consistent with needs of the service. As a part of that program the Carrier used the facilities afforded by the "B & B Yard" for storing, handling and distribution of roadway materials that were not shipped from the source of supply directly to the Maintenance of Way employes for storage and/or immediate use along the line of road.

Inherent in these collective agreements is the frequently overlooked right of the Carrier's Management Officials to manage its property and affairs consistent with whatever share therein has not been contracted away to its employes who are to do the work. It is expected of the Management that it will provide the necessary tools, machinery and facilities for doing its normal and regularly recurring work, and, to be consistent therewith, it must be recognized that a correlated right exists to withdraw those facilities from service when no longer needed, and, provided same is not done to defeat the legitimate ends of the contract for performance of the Carrier's work.

In this case we can find nothing wrong with abandoning the facilities of the "B & B Yard" as a place for storing track and bridge materials when the continued use thereof was dependent upon a need that existed for only so long as that need could not be served by handling the track and bridge materials as roadway stock.

What we do not understand, and wherein we see an attempt to defeat the legitimate ends of the contract in question, is an inference to be drawn from the record and tending to show a purposeful removal of store stock on hand at the time or just prior to abandoning facilities, to another location to be thereafter handled as it would have been had that same store stock remained for distribution through the store facilities. To this end, the contract was violated.

That part of the claim stated as (a) and (b) will be sustained at pro rata rate. Finding no violation to have occurred in connection with balance of claim, that which is identified as (c) will 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 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 violated, but in only the one particular as stated in the Opinion.

AWARD

Claims disposed of in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1956.