

Award No. 8831

Docket No. MW-8183

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(1) The Carrier violated the effective Agreement when it assigned the work of repairing a water supply pump at Ogden, Utah to an employe who holds no seniority rights under the provisions of this Agreement.

(2) Water Service Mechanic O. J. Betteridge be allowed pay at the time and one-half rate for an equal number of hours as was consumed in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On June 14, 1954 the Carrier assigned a Machinist who holds no seniority rights under the provisions of this Agreement to perform the usual and traditional duties of a Water Service Mechanic during recognized overtime hours at Ogden, Utah. Specifically, the work involved the dismantling, repairing and reassembling of a Water supply pump at this location. Three hours were consumed in the performance of this work.

The Claimant, Mr. O. J. Betteridge, who was regularly assigned to the position of Water Service Mechanic, Water Service Gang No. 1, with headquarters at Ogden, Utah was available, fully qualified, and could have performed the above referred to overtime service, had the Carrier called or notified him to do so.

The Agreement violation was protested and claim filed in behalf of Claimant Betteridge.

The claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated January 1, 1953, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and requests that said claim, if not dismissed, be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

OPINION OF BOARD: Claimant is a Water Service Mechanic at Carrier's location at Ogden, Utah, and is covered by the Carrier's Agreement with the Maintenance of Way Employees. On June 14, 1954, a Machinist covered by Carrier's Agreement with System Federation No. 114 spent three hours during a recognized overtime period dismantling, repairing, and reassembling a water supply pump within the Motive Power and Car Department shop and service area at said Ogden location.

In pressing its position that the above-mentioned work belonged to Claimant and that he therefore be compensated at the time-and-one-half rate for the pump-repair hours Carrier failed to give him, Petitioner argues as follows: (1) Scope Rule (a) specifies employees in "water supply" as included under the Agreement. Claimant was such an employee. (2) Under this designation the work of installing, dismantling, repairing, and assembling water supply pumps has traditionally been done by Carrier's Water Service employees belonging to the Organization. This has been true of the property in general and of the Ogden location in particular. In support of the claimed work at the Ogden location three signed statements by Maintenance of Way employees are presented, one an affidavit. (3) Carrier itself, in its submission for a case decided by Award No. 1525 on the Second Division, stated that the above was true at its West Oakland location and on other divisions and locations. (4) The only work on pumps customarily done by Machinists at Ogden was machining or otherwise processing parts of the pumps.

In opposing Petitioner's Claim, Carrier contends as follows: (1) As shown by six affidavits, the work here at issue was never done by the Organization's members. They merely repaired the pipes leading to and from the pump here involved. (2) At the Ogden location, as elsewhere on the property, the Agreement does not give the Organization's members the "exclusive" right to repair all water pumps. Their Scope Rule is general in its terms and does not specify particular kinds of work or operations. Past practice must therefore be considered; and, as above stated, said practice does not support the instant claim at Ogden, specifically in the Motive Power and Car Department shop and service area there.

In determining the instant claim the Board here follows the relevant and applicable portions of its Opinion in its Award No. 8793, to-wit: (1) A scope rule that, like the one here involved, names positions or employees rather than work, duties, or operations must be held vague and ambiguous. Proper meaning and content can be given to such words only by positive evidence in respect to past practice and custom. (2) Such evidence should be specific instead of general. That is, it should be related not merely to the property as a whole but rather to the particular location or subdivision thereof where the dispute has arisen.

The record of the instant case contains evidence of the above-mentioned desirable sort. Petitioner has presented three statements, one an affidavit,

regarding the practice at Ogden. Respondent has presented six statements, all affidavits, regarding the practice in the Motive Power and Car Department area at Ogden.

These two groups of statements appear to be opposing and contradictory. In general, this Board is not disposed to attempt a reconciliation of such contradiction or a weighing of such evidence. But in the instant case such reconciliation and weighing is possible as well as desirable. It is possible because Carrier's supporting affidavits are more specific than Petitioner's.

A reading of the respective statements shows that Petitioners refer to pump-repair work at Ogden in general, while Carriers are confined to pumps in the Motive Power and Car Department area at Ogden. It is possible, therefore, that both sets of statements are accurate. That is, it may be true that, although Maintenance of Way Employees have done most of the pump repair work at the general Ogden location, Machinists have done such work in their own sub-location.

Accordingly, the instant Claim cannot be sustained. Past practice at the particular area here involved does not support Petitioner's interpretation of its Scope Rule.

It follows, of course, that this ruling is a very narrow one. It is limited to pump repair work in the Motive Power and Car Department area at Ogden, Utah; and it says nothing definitive about past practice and about the Employees' rights thereunder in any other sub-location or location on Carrier's property, including the remainder of the Ogden location.

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 not violated.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1959.