Award No. 9565
Docket No. MW-8461

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, 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 wash rack at Ogden, Utah to employes who hold no seniority rights under the effective Agreement;

2. Water Supply Foreman Ashton H. Cope, Water Supply Mechanics John G. Wilson, Charles K. Hill, Joseph Szczesny, George E. Johnson and Helper Keith Cope, each be allowed twenty-seven (27) hours' pay at their respective straight time rates account of the violation referred to in part one (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On April 14, 1953, the diesel locomotive wash rack at Ogden, Utah was struck, damaging the brushes and brush rack. This wash rack was installed during the year 1950 by Maintenance of Way employes, who have similarly maintained it subsequent thereto, except for the dates involved in the instant dispute.

Beginning on April 15, 1953, Motive Power Department employes were assigned to dismantle, repair and re-assemble this rack, thereby performing work covered by the scope of the effective Maintenance of Way Agreement. Motive Power Department employes consumed 162 hours in the performance of this work.

Claim was accordingly filed, the Carrier declining the claim throughout all stages of handling.

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.

EMPLOYES' POSITION: The Scope of the effective Agreement, reads as follows:

That rule, as will be noted, merely names the classes of employes whose rates of pay, hours of service and working conditions are governed by the rules of the current agreement. It does not make any reference to work or to the specific duties that may be required by those classes of employes, nor does it set forth the duties that will be reserved to or that will be exclusively performed by the classes of employes named. Obviously, the Scope Rule does not support the claim in this case.

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 employes and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: It is not disputed that the work on the car washing machine involved in this claim was the following:

> ". . . removing of guards, belts and pulleys. The shafts . . . were placed in a lathe and turned to true them. New brush holders were applied and the shafts were reinstalled."

The work became necessary because the machine was struck on April 14, 1953. It was performed on April 15 and 16, 1953 by employes covered by the Motive Power and Car Department Agreement of April 16, 1942.

The claim is based on Petitioner's contention that the work in question accrued to the Water Service Sub-Department employes under the scope and seniority provisions of the applicable Agreement because those employes have historically and traditionally performed all repair work on the car washing machine including the work mentioned.

Carrier contends that ever since the installation of the machine in about 1949 or 1950, it has been operated and repaired by employes covered by the Motive Power and Car Department Agreement of April 16, 1942. Carrier asserts that the foundation for the machine was constructed by Bridge and Building Department employes covered by Petitioner's Agreement with it and that the water and air connections were made by the Water Service employes covered by that Agreement. Carrier also asserts that the only work performed by the Water Service employes in installing the machine was piping necessary for its operation and that these employes have continued to maintain the piping.

The opposing contentions of the parties present a square conflict of fact. Careful consideration of the record discloses that the only probative

evidence submitted by Petitioner to sustain its contention that the claimed work, and all repair work, on the car washing machine has historically and traditionally been perfomed by Water Service employes consists of: "Bridge & Building Foremen's Period Labor Report" for the period October 14, 1951 to October 21, 1951, showing 16 hours "Reprs. to piping and insulating motors at wash rack" and "Bridge & Building Foremen's Period Labor Report" for the period July 21, 1953 to July 31, 1953, showing 56 hours "Installing diesel truck washing facilities". Aside from any question concerning the nature of the work reflected, these reports show a total of only 72 hours work of which only 16 hours were performed prior to April 15 and 16, 1953, the dates on which the claimed work was done. The record also discloses that Carrier submitted a batch of similar reports covering various periods in the years 1951 and 1952 which do not aid Petitioner's contention.

In this posture of the record, we cannot say that the evidence establishes that the Water Supply employes have traditionally and historically performed all repair work, or the claimed work, on the car washing machine involved in this claim. Accordingly, the claim must be denied.

For this reason, we need not consider Carrier's contention that this appeal was untimely.

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 Employe 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 21st day of September, 1960.