Award No. 11784

Docket No. MW-9653

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier was in violation of its Agreement with the Brotherhood of Maintenance of Way Employes when it assigned or otherwise permitted employes outside the scope thereof to move and to install in a new location a punch and shear machine at Vicksburg Shops on October 26, 27, 28, 31, November 1 and 2, 1955;

(2) B&B Foreman H. E. Beard and each employe assigned to his crew during the period referred to in Part (1) of this claim be allowed eight hours' pay at their respective straight time rates for each of the dates referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Maintenance of Way Bridge & Building Department employes have historically and traditionally performed the work required in moving and installing various types of machinery used in the Carrier's Shops.

Beginning on October 26, 1955, and on subsequent dates of October 27, 28, 31, and November 1 and 2, 1955, the Carrier assigned and/or permitted Mechanical Department employes, who hold no seniority rights under the effective Maintenance of Way and Structures Department Agreement, to perform the work required in moving and installing in a new location, a punch and shear machine in the Shops at Vicksburg, Mississippi. This work consisted of the setting of jacks to raise the machine above the foundation; the cutting of foundation bolts; the placing of the machine on skids; the moving of the machine from the Blacksmith Shop to a location about 100 feet south of the Car Shed, a total distance of approximately 350 yards; the placing of the machine on its new foundation and the anchoring of the machine thereto. B & B Department forces constructed the new foundation for this machine. Mechanical Department employes consumed eight (8) hours on each of the dates involved in this claim, in the performance of this work.

Maintenance of Way B&B Department employes were available, qualified and willing to have performed this work, had the Carrier so directed.

Claim as set forth herein was filed and the Carrier has denied the claim.

In a dispute as to whether Maintenance of Way forces or Telegraphers and others had a right to perform crossing protection work, it was found that employes of several crafts had performed the work in the past. The issue was decided in Award 7809, wherein John Day Larkin, referee, found that the evidence indicated that the Maintenance of Way Employes had never had exclusive rights to such work:

> "The Scope Rule of the Maintenance of Way Agreement, as it stands, has not been violated in this instance, since it does not provide for the exclusion of others in the performance of the service in question. Nor do we find any other provision of the parties' Agreement which has been contravened."

In conclusion, the Carrier asks that this claim be denied on the following grounds:

> 1. Notice was not given, nor was opportunity to participate in this dispute allowed System Federation No. 99 (AFL-CIO), representing the International Association of Machinists, the third party to this dispute;
>
> 2. This work belongs to the Machinists, is contained within their Classification of Work Rule and has generally been performed by them for many years; and
>
> 3. The Maintenance of Way Employes cannot show exclusive right to this work, and thus cannot contend that the work belongs exclusively to employes covered under the Maintenance of Way Schedule.

All data in this submission have been made available to the Employes and are made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: In October 1955, Carrier caused a punch and shear machine—in its Vicksburg, Mississippi, repair shop—to be moved to a new location. A Maintenance of Way Bridge and Building Gang constructed the new foundation for this machine and also removed the amicrete and tar which had been poured around the old foundation. Starting October 26, 1955, employes not covered by the Maintenance of Way Agreement removed the machine from the old foundation and moved it to and installed it at the new location. Petitioner filed claim alleging that Carrier violated the Agreement in assigning this work to employes other than its Bridge and Building Gang, herein called B&B employes.

Petitioner contends that the work claimed belonged to B&B employes under the Scope Rule. This Rule does not define the work to be performed by the employes referred to therein. Rule 2 of the Agreement, also cited by Petitioner, lists job classifications in the Bridge and Building Department.

In numerous Awards this Division has held, consistently, that where the Scope Rule contains only the word "employes" or lists job classifications and does not define the work of the "employes" or the work reserved to each classification, it is necessary to determine whether the work claimed has been historically and customarily performed by such employes. See, as examples, recent Awards Nos. 10585, 10715, 10931, 11128, 11525, 11598 and 11758. With

this as our premise and recognizing that Petitioner has the burden of proof, we weigh the material facts of record.

It is undisputed that prior to the dates of the alleged violation B&B employes had performed some work of the kind here involved. And, the record makes clear that employes in other crafts and classes had also performed some of such work.

Petitioner seeks to establish its right to the work by listing 31 instances in 1943 and 19 instances in 1944 when B&B employes performed similar work at Vicksburg; plus, 1 instance in 1951, 3 instances in 1954 and 3 instances in 1955 at Baton Rouge. Viewing this evidence in its most favorable light we cannot credit it as establishing a **prima facie** case that Carrier's B&B employes had historically and customarily been consistently assigned such work to the exclusion of others.

We note that Petitioner's General Chairman in a letter to Carrier's Manager of Personnel, dated February 15, 1957, stated:

> "We are not claiming this work entirely upon past practice, but due to the fact that we feel that in reality it is our work. . . ."

Petitioner having failed to satisfy its burden of proof, we will deny the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1963.