

Award No. 11906
Docket No. MW-11185

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

WABASH RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when, on or about February 25, 1958, it assigned an employe who holds no seniority rights under the provisions of this Agreement to operate a Locomotive Crane in connection with the performance of heavy repair work on Bridges Nos. 665, 753, 754 and 755 on the Montpelier Division.

(2) Furloughed Dragline Operator Gerald Stanberry be allowed pay at the straight time rate for a number of hours equal to the number of hours consumed by the other employe in performing the Crane Operator's work referred to in Part (1) of this claim, retroactive to and including March 11, 1958.

EMPLOYES' STATEMENT OF FACTS: During February and March of 1958 the Carrier's Bridge and Building employes were engaged in the work of making heavy repairs to Bridges Nos. 665, 753, 754 and 755 on the Carrier's Montpelier Division.

Commencing on or about February 25, 1958, the Carrier assigned Crane Operator Jack Hanline, who holds no seniority rights under the provisions of this Agreement, to operate a locomotive crane in connection with the performance of the above referred to Bridge and Building work.

On March 10, 1958, the Claimant who has established and holds seniority as a Dragline Operator and who was regularly assigned as such, was furloughed in force reduction.

On March 11, 1959 the Claimant reported for another work assignment or to exercise displacement rights and was informed that there was neither a work assignment nor a junior employe in service whom he could displace,

number of hours consumed by the other employe in performing the Crane Operator's work referred to in Part (1) of this claim, retro-active to and including March 11, 1958."

That claim is without merit for the reason that the provisions of the agreement between this Carrier and its employes in the Maintenance of Way Department represented by the Brotherhood of Maintenance of Way Employes were not violated as alleged in Committee's Claim No. 1, and for the further reason that Claimant had no seniority as locomotive crane operator.

The alleged claims presented in the Committee's ex parte Statement of Claim are not supported by the rules of the agreement and should be dismissed and if not dismissed, denied.

The Carrier affirmatively states that the substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties hereto and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: It is Claimant's contention that during February and March, 1958, the Carrier's Bridge and Building employes were engaged in the work of making heavy repairs to bridges on Carrier's Montpelier Division; that on or about February 25, 1958, the Carrier assigned Crane Operator, Jack Haneline, who held no seniority under the provisions of the Maintenance of Way Employes Agreement to operate a "locomotive crane" in connection with that work which was the work of the Bridge and Building Department; that on March 10, 1958, the Claimant, Gerald Stanberry, who had established and held seniority as a Dragline Operator, and had been regularly assigned as such, was furloughed in force reduction; that on March 11, 1958, the Claimant reported for another work assignment or to exercise displacement rights and was informed that there was neither a work assignment nor a junior employe whom he could displace even though Claimant was qualified to have performed the locomotive crane operator's work; it is the contention of the Petitioner that under the Scope Rule the work of "locomotive crane operator" is work that belongs to the Bridge and Building Department employes, that in the exercise of his seniority, there being no locomotive crane operator available, Claimant had the right under the Agreement, of an assignment to the position, and Carrier has violated the Agreement.

To the contrary, it is urged by the Carrier that, in the Scope Rule, "Locomotive Crane Operator" designates the position but it does not describe nor enumerate the work to be performed; nor is there anything in this Agreement which prohibits employes other than those subject thereto from operating locomotive cranes. It is the further contention of the Carrier that all locomotive cranes owned and in operation by this Carrier are assigned to the Mechanical Department, that this particular Locomotive Crane No. 3061 was purchased in 1928 and up to the time of the presentation of this claim had been operated for thirty years by the same operator, Jack Haneline; Carrier further contends that Claimant in a conversation with a Supervisor asked that he be allowed to exercise his seniority on a position held by junior "dragline operators"; that no request was made by him to displace any "locomotive crane operator". Carrier denies there has been any violation of the

Agreement and further objects to a consideration of this claim on its merits as there is a variation between the claim as it was presented on the property and the claim as presented to this Board.

Before proceeding to a discussion of this claim on the merits, we must dispose of Carrier's objection to a consideration of the claim as hereinbefore indicated. In the initial presentation of the claim by the General Chairman we note it is charged "that the Carrier violated the provisions of this Agreement when it refused and neglected to assign Gerald Stanberry dragline operator . . ." That put in issue all the rules of the effective Agreement and a perusal of the Record does not demonstrate that, basically, there is any appreciable difference between the claim as presented on the property and as it was presented here. As a consequence, therefore, the motion to dismiss will be denied.

We will then proceed to a discussion of this claim on the merits. For the following reasons we are of the Opinion that Claimant has failed to support the claim. There is nothing in the Scope Rule of the Agreement which would indicate that the work of "Locomotive Crane Operator" was reserved exclusively to Bridge and Building employees. Claimant had the burden of proving that historically by tradition, custom and practice this work has been reserved exclusively to them but failed to do so. From the Record there is nothing which would justify a finding that a Building and Bridge employee had ever operated a locomotive crane in the furtherance of this Carrier's business. Though there is provision for the appointment of a locomotive crane operator in the Scope Rule, the Record is silent as to whether or not one had ever been appointed. It is undisputed that to the knowledge of the employees the crane had always been operated by an employee having seniority in the Mechanical Department. There is no evidence that there had been any protest by the Bridge and Building employees prior to the present claim.

Without citing any previous awards, we can state with assurance that a great many of them support the views expressed herein.

Having reached the conclusion that there has been no violation of the Agreement that automatically disposes of other questions presented in this controversy.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.