Award No. 12223
Docket No. MW-11690

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BROWARD COUNTY PORT AUTHORITY
(Port Everglades Belt Line Railroad)

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

(1) That the Broward County Port Authority has violated and continues to violate Paragraphs (a) and (b) of Rule 20 by assigning employes who hold no seniority therein to perform work precisely provided for Maintenance of Way Employes in Paragraphs (a) and (b) of said Rule.

(2) That effective January 1, 1959 and for so long as violation continues to exist, each employe listed in the seniority roster dated January 1, 1959 be allowed pay at applicable straight time rate of pay for an equal proportionate share of the total man-hours consumed by any and all outside parties while performing the work covered by Paragraphs (a) and (b) of Rule 20, mentioned in Part 1 above.

EMPLOYES' STATEMENT OF FACTS: In the initial Agreement between the two parties to this dispute, which became effective on January 9, 1942, the parties included Rule 20 (a), which reads:

"RULE 20

CLASSIFICATION OF MAINTENANCE WORK

(a) All work of construction, maintenance, repairs or dismantling of buildings, wharves, docks, underground structures, and other structures, built of brick, tile, concrete, stone, wood or steel; platforms, walks, roads and roadways, signs, fences, and similar structures, as well as appurtenances thereto; loading and unloading and handling of all kinds of material; delivery of water and supplies to vessels and barges; cleaning and sanitary work, excepting the cleaning of septic tanks and toilets, hauling garbage and refuse. Docking and undocking of vessels and barges, watching patrolling to be performed in emergencies. All work performed by the employes of this depart-

Agreement to extend its scope to cover additional classifications not provided for in the Agreement.

The rule that the NRAB is without authority to grant such an extension is too well established to require further comment. (In this connection see (3) No. 8538, D, Coburn, T.E. v. A.T. & S.F. — C.L.). In short then, the Brotherhood is asking this Board to grant to them compensation for work which they did not perform; of a class or nature of which they do not possess the skill to perform; under an Agreement limited in its scope to a class of worker not capable of performing same; which work by the express terms of the Agreement is not the exclusive right of the claimant to perform and which work by its nature is not covered by the Railway Labor Act.

For the reasons stated above it is respectfully submitted that the claim under consideration here be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Respondent is a public corporation organized and created by an Act of the Legislature of the State of Florida. It operates a deep water port on the southeast coast of Florida known as Port Everglades. "Its principal business is the accommodation of deep-draught vessels entering and docking for the purpose of discharging and loading cargoes, moving in domestic and foreign waterborne commerce." For this purpose, the port has a channel, turning basin, 16 ship berths, transit warehouses, a large uncovered storage area, and furnishes services such as fuel, water and electricity to vessels at each berth.

The Broward Port Authority also owns and operates the Port Everglades Belt Line Railroad. This Railroad is certified by the Interstate Commerce Commission as a Class II terminal switching railroad. It serves the port facilities, industries in the area, and interchanges cars with connecting railroads.

Two accounting systems are maintained; one for the port and another for the railroad operations. "Annual reports are filed with the Interstate Commerce Commission on the railroad operations based upon the railroad accounting records." No reports are filed with this Commission on the port operations.

On January 16, 1942 Petitioner and the Port Authority entered into an Agreement effective January 9, 1942. Rule 1 — Scope governs "the hours of service, working conditions, and rates of pay of employes of the Maintenance of Way Department." The employes covered includes only the rank of Laborers. Rule 20 classifies the work as follows:

"CLASSIFICATION OF MAINTENANCE WORK

(a) All work of construction, maintenance, repairs and dismantling of buildings, wharves, docks, underground structures, and other structures, built of brick, tile, concrete, stone, wood or steel; platforms, walks, roads and roadways, signs, fences, and similar structures, as well as appurtenances thereto; loading and unloading and handling all kinds of material; delivery of water and supplies to vessels and barges; cleaning and sanitary work, excepting the cleaning of septic tanks and toilets, hauling garbage and refuse. Docking and undocking of vessels and barges, watching and patrolling to be performed by the employes of this department previous to the date of this Agreement will be performed by the employes in the Mainte-

nance of Way Department. This work to be done on or order of and at the discretion of the Management or its designated representative.

(b) Track Work. All work in connection with the construction, maintenance or dismantling of roadway and track, such as tie maintaining and renewing of frogs, switches, and railroad crossings, sloping and widening cuts and banks, right of way fences, mowing and cleaning, loading, unloading and handling all kinds of track material, and all other work incident thereto, will be track work, and will be performed by employes in the Maintenance of Way Department."

Petitioner contends that the Port Authority assigned work encompassed in Rule 20 (a) to employes not covered by the Agreement; that the Port Authority, thus, violated the Agreement; that Maintenance of Way employes be compensated for all hours so worked by outside employes.

The record shows, without contradiction, that employes other than those covered by the Agreement performed work classified in Rule 20 (a). Similarly, the record also shows, without question by either party, that Maintenance of Way Employes only performed track work classified in Rule 20 (b).

Respondent argues that this Board has no jurisdiction because the work classified in Rule 20 (a) is not covered by the Railway Labor Act; that such work is not subject to the Interstate Commerce Act; that the Port Authority when not operating the railroad is not a "Carrier" within the meaning of the Act; that the claim should, therefore, be dismissed.

Section 3, First (i) of the Railway Labor Act says:

"The disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Section 1, First of the Act states that: "The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act . . ." Section 1, Fifth of the Act states that: "The term employe as used herein includes every person in the service of a carrier . . . who performs any work defined as that of an employe or subordinate official in the orders of the Interstate Commerce Commission now in effect . . ."

The record is clear that the principal function of the Port Authority is the operation of the channel, the docks and the ancillary services for ships that dock at the port. The operation of the Port Everglades Belt Line Railroad is a separate and distinct undertaking. Each operation is carefully and meticulously, separately maintained. The Port Authority is a "carrier" only in the operation of the railroad. Only the railroad is subject to the terms and provisions of the Interstate Commerce Act. Reports to the Interstate Commerce Commission, as required by that Act, are made only for the railroad operation. No such report is made for the operation of the port and its other

related facilities. Nowhere does Petitioner question this fact. It cites only alleged newspaper statements by Respondent's attorney that Petitioner's claim is valid. These newspaper stories are not statements made by Respondent or its duly authorized agent directly to Petitioner or Claimants. It represents a third party statement which may not be accepted without corroborating evidence.

But even if the attorney was properly quoted in the newspapers, and even if he had made such an admission to Petitioner, it would have no bearing on the essential jurisdictional question.

This Board exists by virtue of a Statutory Act, i.e., the Railway Labor Act. This Board may only accept jurisdiction of disputes and grievances which come within the provisions of that Act. Whether or not Respondent raised the jurisdictional question on the property is of no consequence. Statutory jurisdictional matters may be raised at any stage of the proceedings.

The record here is clear that the work classified in Rule 20 (a) was not performed on the Port Everglades Belt Line Railroad. It was done on the docks, on the ships, wharves, and buildings connected with the port operations. The Port Authority, while operating the port facilities, was not engaged in "commerce" and not covered by the provisions of the Interstate Commerce Act. There is no evidence in the record that anyone other than Maintenance of Way employes performed work on the railroad as classified in Rule 20 (b).

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 no jurisdiction over the dispute involved herein.

AWARD

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1964.