

**Award No. 12325**

**Docket No. MW-11701**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Bernard J. Seff, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**ERIE RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it assigned other than its Maintenance of Way Department employees to perform the work of unloading, storing and reloading track materials at Meadville, Pennsylvania.

(2) The Carrier now be required to restore this work to its Maintenance of Way Department employees.

**EMPLOYEES' STATEMENT OF FACTS:** Traditionally, the work of unloading, storing and reloading track materials, such as rails, tie plates, angle bars, etc., has been assigned to and performed by the Carrier's Maintenance of Way Department (Track) employees.

Nonetheless, on or about May 1, 1958, the Carrier began shipping the above-mentioned materials (including the track materials unloaded, stored and reloaded at Kent, Ohio, by its track employees) to its reclamation plant at Meadville, Pennsylvania, where the work of unloading, storing and reloading of said materials was assigned to and performed by its Stores Department employees, who are outside the scope of this Agreement.

The Agreement violation was protested and claim as set forth herein was presented and progressed in the usual and customary manner on the property, but was declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated January 1, 1952, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** The pertinent portion of Rule 1 reads:

"These rules and rates of pay shall apply to following groups and classes of Maintenance of Way employees in the Maintenance of Way Department and such other employees as are generally recognized as performing Maintenance of Way work and who are supervised by Maintenance of Way officials:

As the organization properly states in its rebuttal to the carrier's submission, 'this Board has no authority to legislate for the parties by revising the current agreement.' The claim lacks merit."

(Interpolation ours.)

Award 7439 held that B&B employes did not have an exclusive right to all concrete work.

Award 5439 held that although section laborers may ordinarily perform snow removal work, they did not have exclusive right thereto and such work was properly required of B&B employes.

Award 5120 held that making of cattle guard frames, telephone booths and boxes, and roadway and station signs was exclusively B&B work, but could be done by Shop Craft employes.

Award 5043 held that work of removing and/or installing double decking in stock cars was not exclusively carmen's work and was properly required of section laborers.

Award 4889 held that the operation of a water treating plant was not the exclusive work of MofW employes and could properly be performed by Mechanical Department employes.

Award 4846 held that although MofW employes ordinarily repaired crossing gates, the repair or replacement of gate arms could be done by Signalmen when electrically lighted.

In the light of the facts and circumstances surrounding this matter, it is clearly obvious that it represents a studied attempt on the part of Petitioner to bring work within the scope of its agreement which has not been placed there through the medium of collective bargaining.

The Carrier has shown that the agreement itself does not confer upon MofW employes the exclusive right which Petitioner is seeking. The record is also clear that MofW employes have not by tradition, custom and practice performed work coming within the jurisdiction of the Stores Department. The work here in question is Stores Department work.

The Carrier submits that the claim herein is baseless, and must, therefore, be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The dispute in the instant case arose when the Carrier assigned the work of unloading, storing and reloading track materials at Meadville, Pennsylvania, to employes in the Stores Department who hold no seniority rights under the effective Agreement.

Petitioner claims that the work of unloading, storing and reloading track materials, such as rails, tie plates, angle bars, etc., has been historically and traditionally assigned to and performed by Carrier's Maintenance of Way employes in the Track Sub-department. On or about May 1, 1958, the Carrier began shipping the above-mentioned materials, including the track materials unloaded, stored and reloaded at Kent, Ohio, by its Track Employes, to its reclamation plant at Meadville, where the above-described work was assigned

to and performed by its Stores Department employees who are not covered by the instant Agreement.

The Carrier contends that where, as here, the Scope Rule is general in nature and does not purport to describe or define work, but bases its coverage on job classifications, the determination of what work is intended to be covered is to be determined by examining which employees have traditionally and customarily performed the work in question to the exclusion of all others.

The Third Division has consistently held, through a long line of cases, that the answer to this problem is found by ascertaining which employees have historically and customarily performed the work in question. See Awards 11658, 10515, 9963, 9565, 9551, 9261, 8065 and many other awards too numerous to require mention.

The problem presented in the instant case dramatizes one facet of this problem which is of serious concern to the Organization. If Maintenance of Way Employees have for a long time performed certain jobs, and then for reasons of economy or other valid administrative reasons, the Carrier decides to assign the work to another group of employees, by so doing, the Maintenance of Way employees may find they no longer exclusively perform this work. Under such circumstances, it is possible that a gradual erosion of exclusively performing certain work could result in undermining the status of Maintenance of Way employees and thus destroy their status under their Agreements.

No argument has been made about the fact that new rail, new angle bars and new tie plates were stored in Kent Yard at Kent, Ohio. The record also states that this material, when received at the Kent location, was unloaded and stockpiled by Maintenance of Way employees. The Carrier's submission also contains the following:

"All of said material was, at all times prior to May, 1958, under the jurisdiction of the MofW Department and carried on that department's accounts and inventories.

\* \* \* For administrative reasons, it was deemed advisable to abandon the storage yard at Kent and to physically transfer the stockpiles to the Scar and Reclamation Plant at Meadville, Pennsylvania.

\* \* \* Since the material in question was transferred to the Stores Department \* \* \* the physical handling has been performed by Storehouse employees in much the same manner as such employees have, for many years, handled many other items of material for use by the MofW Department \* \* \*

In a word, the Carrier transferred the work on these materials from the Maintenance of Way employees to the Storehouse employees represented by the Brotherhood of Railway Clerks.

While the Carrier apparently regarded such transfer of work previously done by Maintenance of Way employees to Storehouse employees as a more efficient basis of operation, the fact remains that there was a unilateral transfer of work to a group of employees not covered by the Maintenance of Way Employees' Agreement. It should also be noted that this transfer of work was effected without benefit of a conference, negotiation or agreement with representatives of the affected employees.

As one of the reasons for this action, the Carrier states that for "administrative reasons" when the work done was moved from Kent, Ohio, to Meadville, Pennsylvania, the said work was transferred from Petitioner's employees to Storehouse employees. In this connection, this Division and other Divisions have held:

" \* \* \* In the final analysis, it is the nature of the work and not the place of its performance which determines to whom it belongs."

(See Awards 2693, 4713 and Second Division Award 1998.)

For the above reasons we hold that the Carrier, by unilaterally transferring work previously performed by Maintenance of Way employees to Storehouse employees who are not covered by the instant Agreement, violated the said Agreement.

The Carrier points out on a procedural matter that the claim as presented on the property was limited to the "Reclamation Plant" at Meadville. This Board agrees that the instant Award should be limited to the issue as presented and discussed on the property.

**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 Carrier violated the Agreement.

#### AWARD

The claim is sustained as in accordance with this Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1964.