Award No. 12412
Docket No. MW-11888

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ALTON AND SOUTHERN RAILROAD

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

(1) The Carrier violated the effective Agreement when, on January 19, 1959 and on days subsequent thereto, it assigned other than its Maintenance of Way employes to construct and paint an incinerator.

(2) Maintenance of Way Welder Arthur Lauth now be allowed fifteen days' straight time pay; Maintenance of Way Helper Homer Crisel be allowed seven days' straight time pay and Bridge and Building Mechanic Henry Tottleben be allowed one day's straight time pay because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Commencing on January 19, 1959, the Carrier constructed, painted, transported and installed a metal incinerator.

The work of constructing the concrete foundation, the transporting of the incinerator from the shop area and the installation thereof on the concrete foundation was assigned to and performed by the Carrier's Maintenance of Way employes.

The work of constructing the incinerator, including the welding together of its component metal parts, and the painting thereof, was assigned to and performed by a welder, a welder helper and a painter coming under the provisions of the Carrier's Agreement with its Federated Shop Crafts. In the performance of this work, the welder consumed fifteen days, the welder helper seven days and the painter one day.

The Carrier's Maintenance of Way and Structural Department employes were available, fully qualified and could have expeditiously performed the work assigned to the Federated Shop Craft's employes.

OPINION OF BOARD: It is the opinion of the Board that this agreement has not been violated.

Between January 14 and January 30, 1959 an incinerator was constructed by Shop Craft Employes of Carrier. It was thereafter transported and mounted on a concrete foundation by the Bridge and Building department of the Employes. Such foundation had also been constructed by employes in the Bridge and Building department of the Brotherhood of Maintenance of Way Employes.

Employes contend that the work of constructing the incinerator itself belonged exclusively to the Maintenance of Way department, and claim damages by reason of the work being performed by Shop Crafts employes:

The relevant provisions of the agreement are as follows:

"RULE 1 — SCOPE

The rules contained herein shall govern the hours of service, working conditions, and rates of pay of all employes in any and all sub-departments of the Maintenance of Way and Structures Department, except the following:

1. Track Supervisors and Bridge & Building Foremen, or those of higher rank.

2. Clerical and Civil Engineering forces.

3. Employes in Signal Department (including telephone maintenance employes).

4. Certain employes covered by the Shop Crafts agreement who occasionally are required to perform work in the Bridge and Building Department."

"RULE 2 — CLASSIFICATION

(a) An employe directing the work of men shall be classified as a foreman, except that an employe working with and directing the work of bridge and building miscellaneous mechanics shall be classified as a bridge and building lead mechanic.

(b) An employe assisting the foreman in directing the work of men under the immediate supervision of the foreman shall be classified as an assistant foreman, or an apprentice foreman, whichever classification is applicable under the rules hereinafter set out.

(c) An employe assigned to construction, repair, maintenance, or dismantling of buildings, bridges, or other structures, including the building of concrete forms, erecting false-work, etc., or who is assigned to miscellaneous mechanic's work of this nature, or who is assigned to mixing, blending, sizing, or applying of paint or calcimine, either by brush, spray, or other methods, or glazing, shall constitute a miscellaneous mechanic.

(d) An employe assigned to the operation of track roadway equipment and roadway machines shall constitute a roadway equipment machine operator.

NOTE: This will not apply to the locomotive crane when assigned to work in the Maintenance of Way Department. This equipment will be operated by an employe outside the scope of this agreement, as in the past.

(e) An employe assigned to assist the respective mechanics outlined in the foregoing paragraphs of this rule will be classed as a helper. Helpers will be required to provide only such mechanic's tools as may be necessary for them to learn the trade."

Employes adopt the position that Rule 2 (c) wherein it classifies employes assigned to construction . . . of buildings, bridges, **or other structures,** grants to them the exclusive right to construct the incinerator involved. It is apparently their position that Rule 2 on Classification also defines or extends the Scope Rule. However, it is not necessary to decide whether such rule on classification does extend the Scope Rule. As Carrier points out, the presence of paragraph 4 in the Scope Rule, which reads:

"4. Certain employes covered by the Shop Crafts agreement who occasionally are required to perform work in the Bridge and Building Department."

even if extended by or combined with Rule 2, is ambiguous insofar as the exclusive right to the work involved is concerned. In such case of ambiguity, employes must prove a past practice or some other facts from which we can reasonably infer that the parties intended the general language to be construed as an exclusive reservation of the particular work involved to Employes. Employes cite no such past practice whereby they have constructed incinerators. They do assert that the mere assignment of the **transportation** and **erection** of such incinerator is an admission of their right to construct same. Such reasoning is fallacious and we hold otherwise.

Inasmuch as Employes have failed to prove that they have exclusive right to the work involved it is not necessary to determine whether the incinerator involved is a "structure" within the meaning of the term as used in Rule 2.

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;

It is the opinion of the Board that there has been no violation of 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 14th day of April 1964.