

Award No. 12972

Docket No. MW-12724

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

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

(1) The Carrier violated the effective Agreement and practices thereunder when,

(a) on or about March 2, 1960, it assigned or otherwise permitted other than Bridge and Building department employees to install floor tile and repair a door on Trailer House No. ED-79

(b) between March 1 and April 15, 1960, it assigned or otherwise permitted other than Water Service Department employees to clean and repair the oil heating stove and to repair the air conditioning unit in Trailer House No. ED-79

(2) As a consequence of the aforestated violations,

(a) Carpenter S. L. Aikens be allowed eight (8) hours' pay at his straight time rate because of the violation described in Part 1 (a) of this claim

(b) Water Service Mechanics C. A. Wood and C. O. Owen each be allowed twelve (12) hours' pay at their straight time rates because of the violation described in Part 1 (b) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant Aikens has seniority as a B&B helper dating from March 30, 1937, and as a B&B carpenter from May 16, 1942. He was assigned to B&B Gang No. 19, with headquarters at Sparks, Nevada, which is the same location at which the subject work was performed.

On or about March 2, 1960, employees of the Automotive Work Equipment shop installed floor tile and repaired a door in Trailer House No. ED-79. Eight hours were consumed in the performance of said work.

It must be apparent to this Division, that by the nature of the work involved, i.e., repairs to mobile house trailers, it would logically fall to employes in the Automotive and Work Equipment Department, rather than the Maintenance of Way and Structures Department.

During handling of this claim on the property, Petitioner's General Chairman furnished to Carrier's Assistant Manager of Personnel for his review a number of statements from employes in the Bridge and Building and Water Service Sub-Departments attesting that they had performed service on house trailers similar to that forming basis of this claim. Presumably, Petitioner will introduce those statements as evidence to support its position when submitting its ex parte submission in connection with this claim. Those statements can in no manner be held to vitiate statements included herein as Carrier's Exhibit K. To the contrary, viewed in the light of those statements, they serve to establish proof of Carrier's position herein that the performance of the work here involved is not reserved exclusively to Bridge and Building and/or Water Service, Sub-Department employes and was, in the circumstances here obtaining, properly performed by Automotive and Work Equipment Department employes. Thus, any statements from Bridge and Building and Water Service Sub-Department employes could not, in view of the statements contained in Carrier's Exhibit K accomplish the purpose intended by Petitioner, in which connection attention is directed to the following, appearing in the Opinion accompanying this Division's Award 6734:

"... It suffices to say that after a careful and extended review the most we can say for the record, from the standpoint of evidence entitled to probative force, is that it discloses a complete standoff in the proof adduced by the respective parties. In that situation, mindful of the rule (see Award 6063) the burden of proving a disputed factual issue rests upon the one who relies upon it to maintain his position, we are constrained to hold claimant has failed to establish such issue with the result his claim cannot be sustained."

Attention is also directed to Third Division Awards 6748, 6824, 6828, 6829, 6839, 6844 and 6856.

CONCLUSION

Carrier submits it has clearly shown the within claim to be entirely lacking in merit and if it is not dismissed, asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a combination of two claims arising out of repairs to a trailer house.

The organization alleges that during March, 1960, the Carrier assigned employes, other than those in the Bridge and Building Department, to install floor tile and repair a door on Trailer House No. ED-79. And further, that Carrier assigned employes, other than those in the Water Service Department, to clean and repair the oil heating stove and to repair the air conditioning unit in Trailer House No. ED-79.

Employes stated that such work is of the character which has historically and traditionally been assigned to and performed by the respective crafts which Claimants Aikens, Wood and Owen represent in this case.

Carrier contends that in cases such as this, where a class of employees claim an exclusive right to certain work, they must either establish the existence of a rule which expressly reserves the work to them, or they must show a general Scope Rule, and then prove a controlling past practice, whereby said work has been reserved exclusively to them. Carrier further alleges that such practice must be as broad as the rule; i.e., system-wide.

It is apparent from the record that the point of controversy is the past practice aspect of this case. There seems to be no evidence of a rule reserving this work to the Claimants. There is however, considerable disagreement as to the past practice involved. This issue apparently places the burden of proof upon the employees to show such past practice.

This Board is of the opinion that the employees have not been successful in sustaining the burden of showing a controlling past practice which would reserve this work to these employees on this Carrier's system.

We fully realize that "burden of proof" is a nebulous sort of thing, not easy to define. However, in this case it simply does not appear from the record that the employees have proven their allegations.

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 was not violated.

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 October 1964.