Award No. 13356
Docket No. CL-12667

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4925) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, when it arbitrarily removed the work of hauling scrap waste and rubbish from the scope and operation thereof, at Roseville, California, and required and/or permitted it to be performed by employes not covered thereby; and,

(b) Mr. J. B. Leonard, Truck Driver, Roseville Stores Department, shall be allowed two hours' additional compensation at time and one-half rate June 30, July 1, 2, 3, 1959, and each Monday through Friday thereafter that the violation recurs; and eight hours' additional compensation at time and one-half rate July 4, 1959, and each Saturday and Sunday thereafter that the violation recurs.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the Carrier), and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter referred to as the Employes), which Agreement (hereinafter referred to as the Agreement), is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. The Carrier maintains a Store Department facility at Roseville, California, approximately eighteen miles northeast of Sacramento, California, General Stores, where employes properly rated and classified under the Agreement order, receive, unload, check, sort, price and stock material and supplies for various using departments and perform pickup and delivery service in connection therewith.

Insofar as the claim for overtime rate is concerned, if there were any basis for claim submitted, which Carrier denies, nevertheless the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of Awards of this Division, some of the latest being 6750, 6854, 6873, 6875, 6974, 6978, 6998, 7030, 7062, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 9748 and 9749.

CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and totally lacking in merit, and if not dismissed for lack of proper notice to other interested parties, Carrier asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: At Roseville, California, Carrier maintains a Store Department facility for the repair of cars. Before the "one spot system" was instituted in June, 1959, bad order cars were placed throughout the car repair yard on any one of the four repair tracks for removal of defective parts and replacement by new ones. Parts and material needed for the repairs were delivered from various storage areas in the yard to the cars undergoing repairs, and the scrap waste and rubbish was transported from these locations to salvage containers for reclamation or to containers destined for dumping or burning areas.

With the "one spot car repair facility", Carrier centralized the repair operations under a roof about two car lengths long erected over three tracks. Parts and materials for car repairs were concentrated close to the repair location, and the accumulation of scrap waste and rubbish was removed from containers also placed in this central area.

The Brotherhood claims that when the "one spot system" was inaugurated the work of hauling the scrap waste and rubbish from the rip tracks to the disposal areas was improperly taken away from Mr. J. B. Leonard, a regularly assigned truck driver of the Stores Department, Roseville, California, and assigned to the mechanical force laborers of the Car Department, employes not covered by the Agreement. It argues that the Scope Rule No. 1 and the practice of 37 years insured him the exclusive right to perform this work.

The Scope Rule of the Agreement is of the general type which lists positions but does not describe the work. To sustain its contention that the Scope guarantees retention of the work to employes subject to the Agreement, the Brotherhood particularly cites Arbitration Award Form C-21 Final and Award No. 6209. Form C-21 Final established agreed-to rates of pay for the positions which are the subject of the Agreement; it did not concern itself with the question of exclusive right to work. Again, in Award No. 6209 the issue was whether a certain job was within the Scope of the Clerks' Agreement; this award did not involve the question of the type of work and its distribution. On the other hand, there is a long line of awards in which we concur, wherein the Board has consistently held that this so-called general type of scope rule, which does not define the work to be performed, does not reserve the work exclusively to the employes covered by the Agreement. Claimant must, therefore, establish that the work in question historically has been performed exclusively by employes covered by the Clerks' Agreement.

With reference to the policy of the removal and the disposition of scrap waste, we note that for some years some of it was processed for packing journal boxes at a reclamation plant located at Sacramento, California, a distance of approximately 18 miles from the Roseville-Jenny repair track.

The scrap waste was collected in containers along the four repair tracks; and when full, these were picked up by truckers covered by the Agreement who then loaded them into vans for shipment to Sacramento. With the use of lubrication pads in journal boxes, Carrier no longer required the reclamation of waste; consequently, it closed down the plant at Sacramento. The need for the service of these truckers in relation to this operation was also eliminated.

In supporting the contention of an exclusive past practice of truckers hauling scrap waste to the burning and dumping areas, the Brotherhood differentiates between the large and heavy waste items as wheels, and the small litter and rubbish as sweepings and paper. It maintains that the truckers exclusively hauled the heavy scrap waste, whereas the mechanical forces gathered together the light rubbish for disposal. There is evidence of overlapping and interchange of this work between the truckers and laborers. We, therefore, find that the Brotherhood has not offered conclusive proof of an exclusive past practice.

The concentration of the car repair operations in a relatively small area reduced the amount of hauling connected with the removal of the scrap waste and rubbish and required some modification in the use of equipment and in operational procedure. Basically, however, under the "one spot system", the overall method of handling scrap waste and rubbish remained the same as it was before June, 1959. Mechanical forces continued to perform the work of collecting scrap waste and rubbish and of transferring it to disposal areas with the aid of lift trucks. Some work was completely eliminated, and the remainder was the type of work performed by mechanical forces prior to the centralization arrangement. Whatever adjustments took place in removal of scrap waste and rubbish were a natural outgrowth of the efforts of Carrier to reorganize its car repair facilities for more efficient and economical operation. In the course of exercising its managerial prerogatives, the resultant changes relative to the removal of scrap waste and rubbish did not impair the rights of Claimant under the Agreement.

For the reasons stated, we hold that the Agreement was not violated.

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 jurisdiction over the dispute involved herein; and

The Agreement of the parties 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 26th day of February 1965.