

Award No. 13572
Docket No. MW-12820

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

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

(1) The Carrier violated the effective Agreement when, on March 18, 1960, it assigned the work of repairing a typewriter table in the District Passenger Freight Office at Eugene, Oregon to outside forces.

(2) B&B Carpenter Van F. Peterson now be allowed two (2) hours and thirty (30) minutes' straight time pay because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Traditionally, the work of repairing Carrier-owned office furniture at Eugene and Portland, Oregon, has been assigned to and performed by Bridge and Building Sub-department employees on the Portland Division.

Because of the increasing amount of such work, the Carrier installed, in 1942, the necessary furniture repair equipment, such as sanders, bench saws, jointers, dust proof steel tank for painting, etc., operated by Bridge and Building department employees, at the B&B Shop, Brooklyn Yards, Portland, to expedite the maintenance and repair of office furniture.

This method of repairing office furniture continued until the Carrier issued the following joint instructions to B&B Foremen L. L. Klinge and R. H. Culberson:

"025-1

Portland, May 19, 1959

Mr. L. L. Klinge
Mr. R. H. Culberson

Quote the following from Mr. Ray:

'Purchasing Department advises they have made arrangements for concerns at Portland and Eugene to handle re-

in question, and there is no basis for the claim presented, and, in addition thereto, it will be noted that the claimant performed service on his regular assignment on the date of this claim; thus, he suffered no monetary loss as a result of Carrier contracting the furniture work upon which this claim is based.

Furthermore, this board has clearly ruled that where the employees are claiming an exclusive right to perform work, the burden rests upon them to establish the existence of the right, including the existence of the practice upon which the alleged right depends. This rule is stated as follows in Award 6824:

AWARD 6824

"Since the Scope Rule of the effective Agreement is general in character and does not undertake to enumerate the functions embraced therein, the Claimants' right to the work which they contend belonged exclusively to them must be resolved from a consideration of tradition, historical practice and custom; and on that issue the burden of proof rests upon the employees." (Emphasis ours.)

Some of the other important awards of this Division recognizing that the burden of proof rests upon petitioner in a case of this kind are Awards 1604, 2517, 2992, 6748, 6829, 6839, 6844, 8129, 8207 and 8261.

CONCLUSION

Carrier respectfully requests that the claim presented herein be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 18, 1960, Carrier had the work of repairing a typewriter table performed by the Koke-Chapman Office Supply House at Eugene, Oregon.

B&B Carpenter Van F. Peterson makes claim that Carrier violated the Agreement because it failed to assign the work to B&B Employees to whom it belongs under the contract. Furthermore, it contends that this work has been traditionally performed by Carrier's forces at Eugene and Portland.

Carrier denies the claim with the assertion that the work involved is not reserved exclusively to B&B Employees under the Scope or any other provision of the Agreement. It maintains that the Petitioner has failed to establish a right to this work through practice and custom. The proof Petitioner has submitted to support his contention of practice concerns the practice at Eugene and Portland only, and since the Agreement is not a sectional, but a system-wide Agreement, Carrier argues proof of the practice must be on a system-wide basis.

The Scope Rule of the effective Agreement is general in character and does not delineate or grant to the employees a specific type of work to be done by them exclusively. There is convincing evidence, however, of an existing practice of B&B Employees performing work of repairing office furniture on the Portland Division. The conduct of the parties to a contract is often just as expressive of intent as the written word. At Eugene and Portland, the practice of B&B Employees performing this work over a long period of years is evidence of Carrier's recognition of their right to this work.

For the above reasons, we hold that Carrier violated the Agreement, and the claim is sustained. Accordingly, Claimant is entitled to two hours, thirty minutes' straight time pay.

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

The Agreement of the parties was violated.

AWARD

Claim is sustained, and Claimant is entitled to two hours, thirty minutes' straight time pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1965.