Award No. 14306
Docket No. MW-14415

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORTHERN PACIFIC RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted other than Bridge and Building Department employes to perform the work of unloading, of placing and of remodeling a car body for use as a sand storage building.

(2) B&B Foreman O. T. Swanson, Assistant B&B Foreman C. A. Bredenberg, B&B Carpenters J. L. Pearson, C. R. Carlson, J. J. Karkowski, A. F. Alwin and L. L. Felton and B&B Truck Driver A. M. Novotney each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours consumed by other forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Maintenance of Way Employes have historically and traditionally performed work in connection with construction, maintenance or repairs, or dismantling of tracks, structures or facilities in the Bridge and Building Sub-department and in the Track Subdepartment of the Maintenance of Way Department, as is evidenced by the following quoted Letter of Agreement which appears on page 64 of the effective Agreement:

"Saint Paul, Minnesota
February 11, 1952

Mr. J. T. Keyes, General Chairman
Bro. of Maintenance of Way Employes
511 Pence Building
Minneapolis, Minnesota

A B&B Department crew is also assigned with headquarters at Brainerd.

Two box car bodies are stationed adjacent to each other at the shops at Brainerd — one of these box car bodies is used for drying sand and the other box car body is used for storing sand. These two box car bodies from dismantled cars were originally fitted up and placed in location in 1942 by carmen.

The car body used for storing sand became deteriorated, and Store Department employes with the use of a locomotive crane removed this car body from its foundation and transferred it to another location at Brainerd for destruction.

Box car NP 14923 was selected for placement at the site where the deteriorated car body had been removed and was to be used for storing sand.

Store Department employes with the use of a locomotive crane placed the body of NP 14923 on the foundation where the deteriorated car body had been removed. After the body of NP 14923 had been placed on the foundation, Car Department employes performed the following work on the body of NP 14923:

Cut out the end of the car body.
Fastened the end of the car body to the end of the car body used for sand drying.
Removed a portion of the roof of the car body.
Made and fitted into place two hatches for sanding.
Repaired the roof and boarded up the sides of the car body.

The work of placing the body of NP 14923 on the foundation and altering this box car body was performed between May 24, 1962 and July 9, 1962.

The claimants in this dispute were assigned to the B&B Department crew with headquarters at Brainerd and were assigned to work from 7:00 A. M. to 4:00 P. M. Monday through Friday.

Claim has been presented in behalf of the eight employes specified for payment at the respective straight time rates for an equal proportionate share of the total number of man-hours consumed by Store Department employes and Car Department employes in unloading, placing and remodeling the car body, which claim has been declined.

OPINION OF BOARD: Store Department employes covered by the Clerks' Agreement removed a car body which had been used for storing sand at the shops and replaced it with another car body. Car Department employes altered the new body for this use.

The Employes contend that Maintenance of Way Employes have historically performed work in connection with construction, maintenance or repairs, or dismantling of tracks, structures or facilities in the Bridge and Building Sub-department and in the Track Sub-department of the Maintenace of Way Department. They rely on Letters of Agreement appearing on pages 62, 63 and 64 of the effective Agreement as evidence of this past practice.

The effective Agreement includes a general Scope Rule. It does not describe, define or otherwise delineate work. It only lists classes of employes. The principle applied by this Board in the interpretation of such general scope rules is firmly established. To establish an exclusive right to particular work under such rules, the employes must prove by competent evidence that they have through tradition and past practice exclusively performed such work.

Award 12952 (Wolf) involved the same parties and Agreement. In this Award we stated:

> "It should be noted that the Letter Agreement involves only such work as is customarily performed by the Employes. It does not enlarge their domain of exclusivity and treats only with that work which the Organization could claim by operation of the Rules and history and tradition. There is no evidence that the parties intended to alter their respective positions with regard to exclusive jurisdiction over work. In fact on February 11, 1952, the parties entered into another letter agreement emphasizing that previous practice concerning work by the Employes were not changed by the Agreement of April 1, 1952.
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> "It is clear, therefore, that before the Organization may claim a violation of the Letter Agreement of January 31, 1952, it must prove that it was entitled to the work of operating the chemical weed spraying machine by custom and tradition. The record is silent as to any history of custom and tradition regarding the right of the Employes to perform this work. On the other hand, the Carrier asserted without denial by the Organization that it had contracted out this work in the 1930's and each year since 1955.
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> "The Organization raised one other point which merits some comment. It argued that the Carrier has acknowledged the Organization's right to this work by agreeing in 1958 to a rate of pay for a spray machine operator and the inclusion of this classification in Rule 2. The fact that a classification is established after the work had been performed for years does not vest it with greater significance than other, older classifications have. Exclusivity must still determined by custom and practice."

See also Awards 10194 (Begley) and 12953 (Wolf).

We concur in the reasoning of these Awards. After careful reviewing of the record made on the property we must conclude that the Employes have not established their right to this work through tradition or past practice.

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

That the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1966.

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