Award No. 15383
Docket No. MW-15647

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The Carrier violated the effective agreement when, on the dates designated in the Statement of Facts, it assigned and/or permitted individuals who do not hold seniority in Seniority Sub-department (c) Plumbing to perform work accruing to the employes of this seniority sub-department which consumed 608 hours computed at the straight time rate of pay and 170 hours and 40 minutes computed at the time and one-half rate of pay, and, as a result thereof:

(2) Mr. W. W. Walden and Mr. E. J. Kieffer, Maintenance of Way Plumbers, each be paid at his respective straight time and time and one-half rates of pay for an equal proportionate share of the straight time and overtime hours consumed in the performance of the work designated in this claim.

(Carrier's Files MW-3128 and MW-3130.)

EMPLOYES' STATEMENT OF FACTS: Prior to August 31, 1963, the calimants were regularly assigned as Roadway Plumbers at the Savannah Terminal on the Savannah Division.

Effective at the close of work on August 30, 1963, the Carrier abolished all positions within the Plumbing Sub-department on the Savannah Division, including those held by the claimants. The work of the abolished positions was thereafter assigned to and performed by other than employes holding seniority in the Plumbing Sub-department. The work involved in this claim was so performed at the Savannah Terminal and was accurately described within the letters of claim presentation, as follows:

On Thursday, November 14, 1963, Coal Chute and Locomotive Fuel Oil tSation Foreman W. J. Overstreet unloaded fuel oil in storage tank at the steam generator which consumed 2 hours and 40 minutes.

On Thursday, November 21, 1963, Coal Chute and Locomotive Fuel Oil Station Foreman W. J. Overstreet unloaded fuel at the Passenger Station and steam generator which consumed 2 hours and 40 minutes.

historical practice support either of these two baseless claims. For that reason, each of these two claims were denied in their entirety when they were separately handled by each and every officer of Carrier on the property.

The effective Agreement between the employes represented by the Brotherhood, and this Carrier, is dated September 1, 1949, as amended, and is on file with your Board. The Agreement, by reference, is made part and parcel of this submission.

OPINION OF BOARD: The instant claim arises out of Carrier's unilateral assignment of certain work to other than Claimants, who held seniority in Carrier's Plumbing Sub-department. The alleged violations occurred on specified dates between November 14, 1963 and January 31, 1964 and the disputed work involved the unloading of fuel oil, repair and servicing of sprinkler systems in various warehouses owned by Carrier, repair to plumbing in such warehouses and certain repairs to water lines.

Carrier abolished the positions held by Claimants on August 30, 1963, after determining there was no longer a need for continuance of such positions. Petitioner initially filed two separate claims in behalf of the occupants of the abolished positions, which alleged that certain work reserved to them was assigned to others. Said claims were duly processed on the property and Carrier denied both on the basis that no work exclusively belonging to Claimants was being performed by others.

The separate claims were essentially identical and Petitioner consolidated them for submission to the Board, which Carrier contends is improper under the Railway Labor Act, as amended and Article V of the August 21, 1954 Agreement. We find no merit in Carrier's contention that the consolidation by Petitioners was improper because the same issues are involved in both claims and no effort was made to change or amend either original claim. In Award 12424, this Division specifically encouraged such consolidation of like claims as a means of avoiding a multiplicity of cases presenting the same issues.

Petitioner contends that the disputed work was allocated to Carrier's Plumbing Sub-department under the Scope and Seniority provisions of the basic Agreement between the parties, a tri-partite agreement dated July 2, 1951 and a Memorandum of Agreement dated January 30, 1957.

Carrier denies that Claimants ever had an exclusive right to the work in dispute and that Petitioner has failed to sustain the burden of proving that such work belongs exclusively to the Plumbing Sub-department.

The Scope Rule of the basic Agreement does not define the work to be performed by the employes listed therein and no job descriptions are contained in the Rules.

The tri-partite Agreement of July 2, 1951, cited by Petitioner, was between the Carrier, Petitioner and another labor organization in connection with a jurisdictional dispute. The evidence introduced by Petitioner concerning its applicability to the instant controversy consists solely of Petitioner's interpretation of the provisions of said Agreement. Petitioner has offered no probative evidence in support of its contention that the tri-partite Agreement expressly

reserves work of the nature involved in this dispute to employes of the Plumbing Sub-department. Award 14034.

Petitioner further contends that Carrier violated a Memorandum of Agreement, dated January 30, 1957, by failing to confer with Petitioner before assigning the work in dispute to other than employes of the Plumbing Sub-department. Said Agreement refers specifically to any work covered by the current Agreement being let to Contractors or outside parties. Carrier has offered an affirmative defense to support its position that the disputed work was not contemplated by the parties at the time the Agreement dated January 30, 1957 was executed. Carrier offered in evidence specific references to its long standing practice of contracting with outside plumbing firms for the performance of similar work over a period of many years.

Thus, we are again confronted with a situation where employes covered by the basic Agreement in the past admittedly have performed work similar to that involved in this dispute under a Scope Rule which is general in nature. No specific reservation of such work to employes of the Plumbing Sub-department is found either in the basic Agreement or supplemental agreements relied upon by Petitioner. Therefore, Petitioner has the burden of establishing that the work in dispute is of the type which only employes under the basic Agreement have traditionally and customarily performed. Awards 15185, 13579, 12670, 12356, 11592.

Carrier denies that Claimants ever had an exclusive right to the work in dispute and that Petitioner has failed to prove that the work it now claims has previously been assigned to such employes exclusively on a system wide basis. Carrier also contends that the parties are in basic disagreement as to certain material facts concerning the unloading of fuel oil, repairs to water lines and repairs and servicing of sprinkler systems.

A careful review of the record discloses that Petitioner has relied primarily on the Agreements between the parties in support of the instant claim and does not deny that work similar to that involved in this dispute has been performed over a period of years by outside contractors and others as averred by Carrier. Moreover, there is conflict in the evidence concerning whether fuel oil is unloaded by employes of the Carrier or the supplier, whether certain repairs to water lines were emergency repairs when anyone available takes care of particular situations and whether local plumbing companies have performed repairs and servicing of sprinkler systems in Carrier's leased warehouses throughout the system.

Carrier has offered in evidence a list of examples where similar work has been contracted to others over a period of (38) thirty-eight years which is not refuted by Petitioner. There is no competent evidence in the record that the type of work involved is reserved to employes coverd by the basic Agreement through history, custom or practice. Awards 14060, 13987, 8173.

Accordingly, we must conclude that Petitioner has failed to sustain the burden of clearly establishing by evidence of probative value that Claimants on the property through consistent practice performed the same kind of work as is here involved to the exclusion of others. Therefore, the claim willl be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving t 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 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 28th day of February 1967.

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