Award No. 19190
Docket No. MW-18226

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, 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 Agreement when it assigned MP&C Department employes to relocate and/or install traffic control signs at Taylor Yards, Los Angeles, California on April 25 and 26, 1967. (System file MofW 152-658).

(2) Claimants E. D. Rodriguez, V. L. Foley and P. E. Germano each be allowed sixteen (16) hours' pay at their respective straight time rates of pay because of the violation referred to within Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier assigned and used employes of the Motive Power and Car Department to perform the work of removing and relocating various traffic control signs and installing a considerable number of new traffic control signs in and about the parking areas adjacent to the office buildings, work areas and roads within Taylor Yards. The traffic control signs are of the standard type commonly used for the control of automobile traffic such as "STOP," "DO NOT ENTER," "SPEED LIMIT," "YIELD," "VISITOR PARKING," "CUSTOMER PARKING," etc. mounted on metal posts which are embedded in asphalt or a solid foundation of concrete.

Work of this character has heretofore been assigned to and performed by B&B sub-department employes as will be noted from the following quoted statements.

"December 19, 1968

Mr. P. J. McCarty

Dear Sir and Brother:

Over the past years as a carpenter in the B&B Sub dept. of the Southern Pacific RR. I have often been instructed by my Foreman to install and relocate traffic control signs at Taylor Yd. I have always considered this a part of my job as a carpenter.

Sincerely and fraternally yours,

/s/ J. K. Terror"

traffic control signs at the Mechanical Department parking area in Taylor Yard.

By letter dated July 3, 1967 (Carrier's Exhibit "B"), Carrier's Division Superintendent denied the claim. By letter dated July 10, 1967 (Carrier's Exhibit "C"), Petitioner's District Chairman gave notice that the claim would be appealed; however, in letter of August 3, 1967 (Carrier's Exhibit "D"), Carrier's Division Superintendent agreed to give the claim further investigation in light of certain contentions raised in conference, but on August 14, 1967 (Carrier's Exhibit "E"), Carrier's Division Superintendent confirmed denial of the claim.

By letter dated August 31, 1967 (Carrier's Exhibit "F"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated March 27, 1968 (Carrier's Exhibit "G"), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim arose when, on April 25 and 26, 1967, Carrier assigned a laborer in the Mechanical Department, represented by a Union other than Petitioner, to install new traffic control signs and relocate others in a parking lot within Carrier's Taylor Yard in Los Angeles, California. The parking lot is used by Mechanical Department employes and is under that Department's control as to traffic flow and parking regulations. The signs were the standard type bearing various legends such as "Stop," "Do Not Enter," etc. The signs were purchased by Carrier affixed to the posts by B&B forces but assigned to the laborer for installation. The laborer dug holes through the black top, which had been put down originally by an outside contractor, erected the signs and resurfaced the area at the base of the sign posts. As a possible Intervenor in this dispute, the representative of the laborer was invited to participate and to make a submission to this Board pursuant to the mandate of TCEU v Union Pacific Railroad (385 U.S. 157). That Organization filed a disclaimer of interest in the matter.

Petitioner's evidence as to its entitlement to the work involved was limited to Taylor Yard. This evidence was not refuted by Carrier. The evidence consisted of statements from four employes to the effect that the work in dispute was performed by them in Taylor Yard. The parties cited many cases in support of their respective positions. Carrier cited 28 cases involving the same parties and the same Scope Rule all of which were denied on the basis that Petitioner did not prove system-wide exclusivity. Petitioner also cited many cases chief among them, on this point, is Award 13334, on another property, which holds that when Petitioner produces a prima facie case at one location the burden shifts to Carrier to come forward with its "alleged affirmative defense." Award 13572 involving the same parties and the same Scope Rule holds that a violation of the agreement can be found on less than a system wide basis. Award 13579 also on the same property holds to the contrary.

Carrier here waited until the last step in the grievance procedure before it raised the question of exclusivity. In the interest of expediting the handling of these matters on the property the matter should have been raised earlier on in the proceedings. In any vent when the qquestion was raised Petitioner did not did not attempt to rebut it. Petitioner contends, under the rationale of Award 13334, that the burden of going forward with evidence that the work in dispute was done by others system-wide shifted to Carrier.

In the situation at bar Petitioner at no time tried to prove that its claim was co-extensive with the Scope of the appropriate bargaining unit as set forth in the agreement. It is endemic to the railroad industry that bargaining units are system wide. In the process of carrying its burden had Petitioner submitted evidence covering other parts of the system similar to that submitted with respect to Taylor Yard, Carrier's failure to come forward with countervailing evidence would have resulted in a finding of a Scope rule violation co-extensive with the bargaining unit which is, of course, system-wide. This Board has found Scope Rule coverage in Award No. 18967 and Award No. 15260 where Carrier failed to rebut evidence consisting of statements from employes attesting to the performance of the work at various places on the system. To find reservation of work at one location without at the same time finding such reservation to be system-wide would negate the very purpose of the system-wide unit. There is no evidence on which to base a system-wide unit finding accordingly the case fails of proof. In this regard Award 14159 holds, with our approbation:

> "This Board deems correct those awards which have held that where the Scope Rule is system wide the practice must coincide. This opinion is not arrived at merely because the majority of cases appear to adhere to that position. Rather it is our view that since the Scope Rule explicitly says that the Rules of the agreement apply to all subdepartment equally and without exception for a practice to change application of, or indeed add to or modify the agreement it certainly must be as broad in its application as the written rules.
>
> The parties to this agreement have not negotiated any local working conditions. The Scope Rule says that the written rules govern the working conditions of all Sub-Departments. It further * * *"

On the basis of the foregoing we feel constrained to dismiss the claim for a lack of proof.

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 Claim should be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1972.

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