

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19576
Docket Number MW-19586

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

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

(1) The Carrier violated the Agreement when it used

- a - Water Service Mechanic B. Johnson to move Maintenance of Way Camp Trailer No. 1053 from Comstock, Texas to Dunlay, Texas on October 1, 1970 (System File MW-70-82);
- b - Water Service Helper Lee Apolinar to move Maintenance of Way Camp Trailer No. 1515 from Langtry, Texas to San Antonio, Texas on October 9, 1970 (System File MW-70-83);
- c - Water Service Mechanic B. Johnson to move Maintenance of Way Camp Trailer No. 1515 from Seguin, Texas to Tornillio, Texas on December 14, 1970 (System File MW-71-9).

(2) As a consequence of the violations described above, the Carrier shall now allow

- a - eight (8) hours' pay to Laborer-Driver P. C. Salinas as his straight-time rate (violation 1-a above);
- b - eight (8) hours' pay to Roadway Machine Operator S. E. Brown at his straight-time rate (violation 1-b above);
- c - nine (9) hours of straight-time pay and seven (7) hours of time and one-half pay at the machine operator's rate to furloughed Machine Operator R. G. Guzman (violation 1-c above).

OPINION OF BOARD: This dispute relates to three instances when employees assigned to the Water Service Department drove trucks pulling house trailers from one location to another - the house trailers being used by Maintenance of Way gangs. The Petitioner argues that since the trucks were being used to perform Maintenance of Way work, Maintenance of Way employees should have been used to operate them. The Carrier contends that the trucks, in each instance, were assigned to the Water Service Department and that the work of moving camp trailers had never been reserved exclusively to any class of employees.

The Organization relies on the Scope Rule, Seniority Rules, Force Reduction Rules, and the Rule relating to Heavy Duty Trucks (Article 22) in support of its position. The essence of the case is whether or not the work in question is work within the Maintenance of Way Department which should have been assigned to Maintenance of Way employees. In Award 19032, involving the same parties, we said:

"The Scope Rule relied on by the Organization is general in nature, and under innumerable decisions of this Board, does not grant the Organization exclusive right to the work in question. Nor can the Seniority Rule be relied on to provide the Organization with the exclusive right to the work. This is certainly not the intent of the Seniority Rule.

Consequently, for the Organization to prevail, it has the burden of proving that the disputed work is of a kind that has been customarily and exclusively performed by the Roadway Track Department in the past."

Without further reference to the many awards on this point, it is a well established principle of this Board that given a general Scope Rule, such as we have here, the burden is upon Petitioner to prove that the work in question has been exclusively performed by the Maintenance of Way employees system wide, by practice and custom.

The record shows that the Carrier has used house trailers for its employees in this department since about 1955. Petitioner has failed to produce any evidence to support its position and therefore we must deny the claim.

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FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1973.