NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19599
THIRD DIVISION Docket Number CL-19717

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7071) that:

1. The Carrier violated the Scope Rule of the Agreement at Stockton, California when on July 15, 1970, it discontinued a daily physical yard check of Tracks No. 37 and No. 38 and in lieu thereof, began compiling lists from Yard Check furnished by employes of the Fruit Growers Express Company.

2. The Western Pacific Company shall be required to return the work of making yard checks of Tracks 37 and 38 to employes who have customarily and traditionally performed such service whenever required by the Carrier, and,

3. R. Lopstain shall now be allowed eight (8) hours' at time and one-half rate of yard checker for July 15, July 21 through 31, August 1 through 14, August 19 through August 21, August 24 through 28, August 31, September 1 through 4, September 8 through 11, 1970 and for each date thereafter while the violation continues.

OPINION OF BOARD: Claimant is an Icing and Report Clerk at Carrier's Stockton Yard. In this yard, tracks 37 and 38 are reserved primarily for the use of Fruit Growers Express Company refrigerator cars. For over twenty-five years Pacific Fruit Express Company supplied Carrier with refrigerator cars, but at a relatively recent (unspecified) time, a new contract was entered into with Fruit Growers Express for this purpose, replacing Pacific Fruit Express.

Refrigerator cars placed on Tracks 37 and 38 are inspected for mechanical condition and listed by employees of Fruit Growers Express. The track lists and information relating to the cars' condition are furnished to the Icing and Report Clerk who prepares lists of mechanical refrigerator cars for the Yardmaster so that appropriate switching instructions may be issued.

In addition to the work performed by employees of Fruit Growers Express described above (which was identical to work previously performed by employees of Pacific Fruit Express) the Carrier contends it instructed the "yard checkers", in this case the Icing and Report Clerk, to make a physical check and prepare a list of Tracks 37 and 38 to verify the accuracy of the lists furnished by Fruit Growers Express employees. On July 20, 1970 the physical checking of the two tracks by the Icing and Report Clerk was eliminated. The Carrier contends that this was done since the duplication of work was no longer required since the contractor's information was deemed to be accurate. The Organization states that this statement of the facts is not accurate in that the physical checking of the two tracks had always (during the prior contractor's tenure) been done by employees covered by the Agreement.

First, as to the facts, there was no position abolished nor was there any transfer of work; we have in this matter the elimination of work. Petitioner has presented no evidence to support the position that the work was traditionally and exclusively performed by employees covered by the Agreement. Furthermore, the Organization has offered no evidence denying that employees of the two Express companies have throughout the contracts checked the two tracks.

The Scope Rule is relied on by the Petitioner to sustain its position. In a recent Award (19551) involving the same parties, we found that the Scope Rule is of the general type, in that it does not delineate work. We concur with that conclusion. Under this type of rule it is well settled that Petitioner has the burden of proving that the work in question has been exclusively performed by clerical employees, system wide, by practice, custom and tradition. Among the many awards upholding this principle are the following, all involving the Petitioner: 18803, 19371, 14593, 10506, 18061.

We do not believe that the elimination of unnecessary work per se constitutes a threat to the Scope Rule's effectiveness. In Award 17467 we said: "We do not view the facts in this case as establishing violation of Rule 1 or any other rule in the Agreement. Specifically, no work covered by the Agreement was transferred to employees not covered thereby. Rather, there was an elimination of a duplication of work." See also Award No. 15824 among others.

Since Petitioner has failed to support its contentions with probative evidence, we must deny the claim.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.