

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19761
Docket Number MW-19522

Frederick R. Blackwell, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company (Pacific Lines)

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

(1) The Carrier violated the Agreement when it assigned mechanical department employees instead of water service sub-department employees to install a pipe line in the sandblast area of Car Shop 9 at Sacramento Yard (System File MofW 152-727).

(2) Water Service Sub-department employees D. B. Gifford, H. Martinez, J. Beaver and G. Hanks each be allowed ten (10) hours of pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: This is a scope dispute in which Water Service Department Employees, Maintenance of Way, contend that work belonging to them was performed by mechanical department employees who are covered by Carrier's Agreement with the Railway Employees' Department. The RED has been given third-party notice of this dispute but has made no submission herein.

Employees of the Water Service Department contend that their Scope Rule was violated when mechanical department employees installed an airline pipe to the filters in the sand blast hoods at Carrier's Car Shop #9 at Sacramento Yard. The work consisted of excavating a trench (296 feet long, fourteen inches wide, and twenty inches deep) and laying therein 3/4 inch galvanized pipe with necessary fittings.

The herein Scope rule is a general one and, thus, the "exclusivity" criteria apply to the resolution of the dispute. Accordingly, in order for the Petitioner to prevail, the Petitioner must show that, by tradition and historical practice, the complaining craft has performed the disputed work, to the exclusion of other crafts, on a system-wide basis on Carrier's property.

In handling on the property the Organization asserted that -

"... In the areas where MP&C Department (former name of Mechanical Department) employees have performed the type of work described in our Statement of Facts, claims have been submitted on several Divisions, including the Sacramento Division, and various Superintendents, including Superintendent Robinson, have sustained the position of the Brotherhood of Maintenance of Way Employees that this type of work belongs to the Water Service Sub-department employees."

Superintendent Robinson, as asserted in the above statement, did in fact sustain the position of the Water Service employees in settling a prior dispute of a similar nature. This fact is evidenced by a May 25, 1965 letter of Superintendent Robinson which, in pertinent part, reads as follows:

"We have investigated this claim and find that all airline piping from main pipeline to machines or work benches belongs to the Water Service Dept. Work in the instant case was from the main airline to the work bench. The Mechanical Dept. did not endeavor to call Water Service employees to perform this work.

In view of the fact that work of this nature properly belongs to Water Service Mechanics, claim is in order and will be paid."

The concurrence of the Division Chairman, Brotherhood of Maintenance of Way Employees, is shown on the face of this letter.

For its part Carrier entered a general denial against the employees' claim of exclusivity and, in addition, asserts that the May 1965 letter of Superintendent Robinson was based on misinformation concerning practices on Carrier's system and that the same Superintendent subsequently denied the claim in the instant dispute on the basis of accurate information. Carrier also asserts that, despite the Organization's reference on the property to various Superintendents having sustained the herein position of the Water Service Department employees, only one superintendent - Robinson - is shown by Petitioner's evidence to have concurred in that position.

On these facts, and the record as a whole, we can but conclude that Petitioner has not carried its burden of proof under the "exclusivity" criteria. The Robinson letter was the sole evidence submitted by Petitioner. It was not offered to show a local practice which had been approved by a local agreement. Instead it was offered to show system-wide performance of the disputed work by the complaining craft, to the exclusion of other crafts. Yet the letter related to the practice on a single division only and even this one instance has been made indecisive by Superintendent's Robinson's rejection of the claim herein. The Robinson letter, therefore, falls short of proving performance of the disputed work by the Water Service Department employees throughout Carrier's system. Accordingly, we shall dismiss 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

The claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1973.