

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19815
Docket Number MW-19721

C. Robert Roadley, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(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 System Machine Operator J. R. Vanya instead of Laborer-Driver C. Fields to perform truck driving work on January 14 and 15, 1971 (System File MW-71-28).

(2) In addition to the pay he has received, Laborer-Driver C. Fields be allowed sixteen (16) hours of pay at the laborer-driver's straight time rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: This dispute involves the question of whether the Scope Rule, Seniority Rules and Laborer Driver Rule in the Agreement confer upon the claimant exclusive rights to drive a particular truck while claimant was assigned to Extra Gang 222 on the claim dates. The Scope Rule reads, in pertinent part:

"These rules govern rates of pay, hours of service and working conditions of all employees in the Maintenance of Way and Structures Department (not including supervisory forces above the rank of Foreman) represented by the Brotherhood of Maintenance of Way Employees as follows:

Roadway and Track Department:

Foremen, Assistant Foremen, Apprentice
Foremen, Laborers, Highway Crossing Watchmen,
and/or Flagmen, Watchmen at Non-interlocking
crossings, and Lamp Tenders."

Claimant has established and holds seniority as a laborer-driver within the Roadway Track Department.

The Laborer-Driver's Rule in the Agreement reads, in pertinent part:

"When a motor vehicle for use on the highway is assigned to a track gang for the purpose of transporting men and material in connection with their work, one position of 'Laborer-Driver' shall be established for each such vehicle so assigned *****." (Emphasis added)

The last paragraph of the Laborer-Driver Rule reads:

"Laborer-Drivers are working members of a track gang, and the number of Laborers, as well as the number of motor vehicles for use on the highway, used in a **track** gang, is a prerogative of management."

A careful review of the record before us reveals that the particular truck in question, Truck 2152, was not assigned exclusively to Gang 222 but was also assigned to the second shift gang, Extra Gang 219, on the claim dates, and Claimant was paid the Laborer-Driver rate for both such dates as a working member of Extra Gang 222. Nothing in the Agreement supports the contention that Claimant, as a Laborer-Driver, had exclusive rights to drive any particular truck or that the Carrier is restricted in the use of a carrier-owned vehicle to its operation by any one employee alone to the exclusion of all others. The record further shows that, on the claim dates, the material hauled by Truck 2152 which precipitated the claim was not that consisting of "men and material in connection with their work" (the work of Extra Gang 222).

Petitioner has not introduced any evidence of probative value to support the contention that work other than work relating to Extra Gang 222 should have been performed by Claimant and has, therefore, failed to meet the burden of proof. In the absence of such evidence we must look to the Agreement and the relevant rules therein in reaching our determination. It is not within the purview of this Board to expand the language of an agreement but rather to limit our consideration to an interpretation and application of the agreement as it exists.

Award 18471 (O'Brien) stated, in part:

"In order to sustain their contention, the Organization has the burden of proving that the Agreement clearly grants it exclusive right to the work complained of by saying that such work is reserved to the Organization, or, in the absence of such a Rule, it must prove, by probative evidence, that the work is of a kind that has been historically, customarily, and exclusively performed by employees covered by the Agreement."

Also, see Awards 15185; 16112; 17003; 18104; and many others.

Additionally, Award 14531 stated:

"This Board has held on any number of occasions that we follow the basic and ordinary rules of contract interpretation and construction. We are bound by the terms and provisions of the Agreement before us. We have no power or authority, and we may not make new provisions, abrogate provisions or alter existing provisions of the Agreement."

In view of the foregoing we will 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 20th day of June 1973.