

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20018
Docket Number MW-19518

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Atchison, Topeka and Santa Fe Railway Company
(- Eastern Lines -

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

(1) The Carrier violated the "Foreman's and Laborer's Agreement" and Article IV of the National Agreement of May 17, 1968 when, without prior notification to the General Chairman, it contracted with outside forces to perform the work of cleaning cars at Florence, Kansas (System File 130-238-5).

(2) Messrs. G. S. Rosebaugh, J. R. Camareno, J. M. Yeager, A. E. McGill, J. L. Leal, S. P. Quirate and D. Gomez each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours (average - 3 hours per day) consumed by outside forces in performing said car cleaning work, beginning with September 10, 1969 and continuing until the violation is terminated.

OPINION OF BOARD: In this dispute, the Organization alleges that beginning on or about September 1, 1969, Carrier assigned car cleaning work to outside forces who have no seniority under the scope of Carrier's Agreement with its Maintenance of Way employees; that Carrier assigned this work to outside forces without advance notice to the General Chairman as required under Article IV of the May 17, 1968 National Agreement. The record discloses that Carrier furnished cars to Walt Keeler Company, Inc., suitable for rock loading; that prior to April 30, 1967, cars to be used in loading rock at this company's location were cleaned by Maintenance of Way forces headquartered at Florence, Kansas; that on April 30, 1967, headquarters for track forces at Florence, Kansas, were abolished and thereafter, the cleaning of cars at Florence was accomplished by track forces headquartered at Strong City, Kansas; that about June, 1969, due to increased track maintenance requiring more attention by the Maintenance of Way Forces at Strong City, Carrier began delivering uncleaned as well as cleaned cars at Florence for Walt Keeler Company directly to that company on their tracks and Walt Keeler Company began performing the necessary cleaning and billed Carrier for such cleaning services; that on July 28, 1969, Walt Keeler Company turned over the cleaning of the cars to two individuals who billed Carrier directly for their services. The Organization contends that the involved work is included in the Scope Rule of the Maintenance of Way Agreement and that Maintenance of Way employees have exclusive right to this work, not only under the Agreement, but also under past practice on this property; and that this is a continuing claim. Carrier denies that this is a continuing claim and that

under the Time Limit Rule on this property, a claim based on the cleaning of cars other than those cleaned on October 31, 1969, is not properly before this Board; that there is no rule in the controlling Agreements nor is there any established practice which gives to employees of the Maintenance of Way Craft a prior or exclusive right to clean cars; and that there is no rule in the current Agreement providing for penalties claimed.

This Board finds that the involved work is not specifically mentioned in the Scope Rule of the applicable Agreement and the Organization has failed to prove exclusivity of the involved work on a system wide basis as required by the Foreman's and Laborer's Agreement. The question of exclusivity is not involved in Article IV. However, the record reflects that during the handling on the property, Carrier consistently took the position that September 10, 1969, was the only date for which a claim was presented, because the claim does not involve a continuing violation and that on that date, none of the involved work was performed. The record further reflects that the Organization did not deny these two contentions of Carrier in the handling on the property or in the statement of the position of the employees before this Board. Therefore, there could be no claim before this Board except the claim for September 10, 1969. There being no proof that any of the claimed work was performed on that date, this dispute must be resolved in favor of Carrier. Neither the Scope Rule nor the Classification Rule or the Wage Scale makes any mention of "Cleaning Cars". For the foregoing reasons, this claim will be dismissed.

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 Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1973.