

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20232
Docket Number MW-20162

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Chesapeake and Ohio Railway Company
(Chesapeake District)

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

(1) The Carrier violated the Agreement when it assigned Car Department employees instead of track forces to clean cars in Ashland Yards on November 6 and 7, 1971 (System File MG-1302/C-TC-36).

(2) Section Foreman Vester Withrow, Laborers Raymond Lucas, Jack Dunlap, Talmage Gibson, Delaware Johnson, Fred Dailey and Grover Bowen be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours expended by Car Department employees (112 hours) in the performance of this work.

OPINION OF BOARD: On the dates in question, Carrier had a number of cars cleaned at Ashland, Kentucky, by employees who are not covered by the Agreement between the parties. The Organization urges a violation of its Scope Rule, particularly the portion of Rule 66 (b) which recites:

"...; and similar work heretofore assigned to track employees."

The Carrier denies a violation, stating that the Organization has failed to establish rights to the work under the theory of "exclusivity."

Confining ourselves to matters considered on the property we note that the Organization asserted that the work in question has always been performed by its members. The Carrier replied that Mechanical Department personnel have also cleaned cars at Ashland for a number of years.

In numerous Awards, this Board has held that a Scope Rule, which is general in nature, is not violated unless the evidence of record shows that the work at issue has been traditionally and customarily performed, on a systemwide basis, to the exclusion of all other employees, because an Agreement covers the entire system in scope and application. See, for example, Award 19516 (Blackwell).

Thus, under the "exclusivity" theory, we would be compelled to dismiss this claim for failure of proof. However, before this Board, the Organization urges that the "exclusivity" doctrine is not applicable to this dispute. It argues that its claim is to car cleaning on "derail" tracks, whereas the Firemen and Oilers have performed car cleaning on "clean-out" tracks.

The Organization states that its claim for all car cleaning work was limited to work which it had previously done on certain tracks, and was not an attempt to obtain car cleaning which has been done by the Firemen and Oilers on other tracks. In this regard, it is suggested that the history, custom and tradition of the work performed by both Organizations at Ashland, Kentucky, be reviewed.

Without immediate regard to the question of whether or not the Organization's above stated position is a valid distinction under the long established rule of "exclusivity", we find that the record does not afford us the opportunity to issue an Award on the merits of the contention.

This Board has ruled on numerous occasions that its jurisdiction is limited to a review of the record as considered on the property. We are unable to find that the Organization made the distinction, to the Carrier, that it now urges to this Board. In the absence of same, Carrier was precluded from a consideration of the position now advanced, and was not afforded an opportunity to comment thereon, or present factual evidence to that issue.

Accordingly, we will dismiss 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 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 will be dismissed.

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1974.