

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41013
Docket No. MW-38950
11-3-NRAB-00003-050386

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned electrical craft employees to perform Maintenance of Way Water Service Sub-department work (service air conditioner) in the El Paso Yard at El Paso, Texas on June 3, 2004, instead of Water Service Sub-department employees F. Edgar and H. Moreno (Carrier’s File 1403654 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants F. Edgar and H. Moreno shall now ‘... each be paid their proportionate share, at the respective rate of their assigned positions, for the twenty-four (24) straight time hours worked by the Electricians to service the air conditioners described herein. Payment shall be in addition to any compensation they may have already received.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The instant dispute is a work jurisdiction claim. The International Brotherhood of Electrical Workers (IBEW) was given ThirdParty notice and filed a Submission to advance its position.

The instant claim arose after the Carrier assigned IBEW-represented employees to perform some kind of servicing work on an air conditioner at the Electrical & Water Service Shop located at the west end of the Campbell Street Yard in El Paso, Texas. The Claimants were furloughed employees at the time. The claim only alleged that “. . . servicing of an air conditioner . . .” was performed; no further details were provided. It also cited 11 specific Rules to have been allegedly violated. The Carrier challenged all of the Organization’s assertions made in the claim and all appeals.

It is well settled that work jurisdiction claims of this kind between different organizations require one of two specific types of evidence to successfully establish that the disputed work has been exclusively reserved to the claiming organization. The claiming organization must either demonstrate that its Agreement language, usually the scope clause, explicitly reserves the disputed work to covered employees or, in the alternative, the organization must demonstrate that the specific work has been customarily, traditionally, and historically performed system-wide by covered employees to the exclusion of other crafts. See, for example, Third Division Award 21898, which denied a similar claim decades ago between these same parties.

The Board carefully examined the text of all 11 Rules cited by the Organization. None of them explicitly reserves “. . . servicing of air conditioners . . .” to BMWWE-represented employees. Moreover, Rule 1, which is a general type of scope rule, does not mention air conditioners anywhere in its text.

Because of the lack of any specific Agreement language that explicitly reserves the work in question, the Board carefully examined the available evidence of past performance. On the record before the Board, not only does the evidence fail to specify exactly what work was done on the air conditioner in question, there is no evidence of past performance anywhere else on the system covered by the parties' Agreement. The El Paso Yard operations are located in only one of nine seniority districts covering the overall system.

Given the state of the record described above, the Board must conclude that a violation of the Agreement has not been proven. Accordingly, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of July 2011.