

SPECIAL BOARD OF ADJUSTMENT NO. 279

Award No. 299

Case No. 299

Parties Brotherhood of Maintenance of Way Employes
to and
Dispute Union Pacific Railroad Company
 (Former Missouri Pacific Railroad Company)

Statement

of Claim: (1) Carrier violated the current working agreement, especially the Scope Rule and Rules 1, 2, 3, and 11, account two B&B Carpenters were assigned to operate two tie handler cranes, the THC-1 and THC-9, working with the two Division Bridge Gangs. The Carrier has neglected to bulletin these machines to the machine operator class of employes to give them the opportunity to bid on these machines as their seniority would allow.

(2) Claimants R. J. Beussin, and S. G. Warren, who are employed on the Missouri Division as Machine Operators should be allowed eight hours pay per day at the Machine Operator's rate of pay from December 15, 1985 until recalled to work or the machines are bulletined to proper subdepartment in line with our Agreement.

Findings: This Board has jurisdiction of this case by reason of the Parties Agreement of January 5, 1959.

These claims were filed on behalf of two (2) furloughed Machine Operators because Division Building and Bridge (B&B) Gangs 2045 and 2046, during December 1985, were working in the vicinity of Poplar Bluff, Missouri and Union Electric Meraman Bridge, on the DeSota Subdivision and said Gangs used two (2) bridge tie handler cranes (THC-1 and THC-9) operated by B&B Carpenters, C. A. Bader and R. Siebert, respectively.

The THC-1 is a bridge tie crane operated by the B&B Department. It is a piece of heavier equipment than the THC-9 Tie crane. It is equipped with rail clamps to permit anchoring the crane to the rail so that the boom may accommodate heavy loads as they move over the edge of a bridge, without tipping the crane over used by the Track Gang but was on loan to the Bridge Gang and was operated by a Machine Operator from the Track Gang on the dates questioned.

The Employees argue that the Scope and Rules 1-2, and 3 were violated.

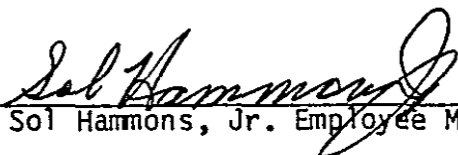
The Employee's position in this case is without merit. The exclusivity sought is not provided for in the rules cited. Here "scope" is general in nature and lacks the specificity to confirm exclusivity to track Gang Roadway Machine Operators. As noted in Third Division Award 19494:

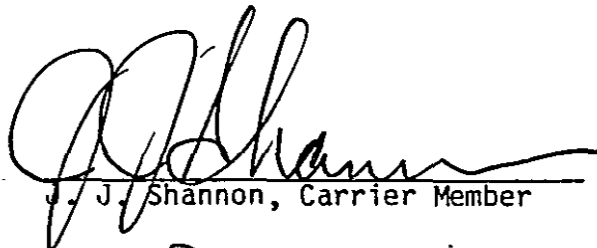
"It is apparent from the wording of the rule that it is one of those characterized by many decisions of this Board as 'general.' A general scope rule will not, of itself, confer exclusive right to the performance of work. A party claiming exclusive right under a general scope rule must prove, by evidence with probative value, that it has performed the claimed work exclusively, system-wide by tradition, custom and practice. That principle is expressed in a line of cases that represents the decisive weight of authority on the question. Citation of particular cases has become superfluous. The point is too well established by the Board to require it."

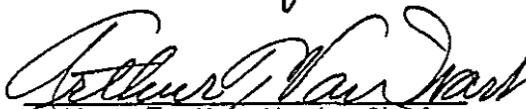
Likewise, Rules 1 - Seniority Datum, 2-Seniority Rights, 3-Reduction in Force and 4-Bulletin are general in nature and specific as to their application.

That exclusive and sole right to operate only a particular machine is something that must be derived from negotiations. The Board has no authority to add anything to the Agreement. These claims will also be denied.

Award: Claims denied.


Sol Hammons, Jr. Employee Member


J. J. Shannon, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued February 6, 1989.