



Award No. 5887

Docket No. 5832

2-GM&O-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 29,
RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO
(CARMEN)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly assigned other than Carmen to build, and other than Carmen Painters to paint portable wooden shelters with tool-box seats at its Bloomington, Illinois Shops.
2. That accordingly, the Carrier be ordered to additionally compensate Carmen Robert Lamborn and Phillip Altes in the amount of thirty-two (32) hours each at the time and one-half rate, and compensate Carman Painter G. K. Messamore in the amount of two 4-hour calls at the straight time rate.

EMPLOYES' STATEMENT OF FACTS: The Gulf, Mobile and Ohio Railroad Company, hereinafter, referred to as the carrier, maintains a locomotive and freight shop and train yard at Bloomington, Illinois. This shop includes a planing mill and cabinet shop where cabinets, desks, lockers, tool boxes, signs and many other such items made of wood are built and repaired.

There are approximately seventy (70) carmen employed at Bloomington, and eight (8) carmen painters employed there. Robert Lamborn, Phillip Altes and G. K. Messamore, hereinafter referred to as the Claimants, are a part of this force, with Lamborn and Altes assigned as mill carpenters in the planing mill. G. K. Messamore is assigned to painting.

On or about April 17, 1968, maintenance of way forces built two portable shelters with tool-box seats to be used on trucks or other means of conveyance, or as stationary shelters. They are so designed to be used on different vehicles or to be stationary.

Each is made of 3/4" plywood, 6'x8' and approximately 4 feet high with cone roof of plywood. The roof is fastened with 36 No. 14x2" wood screws. There are angle iron braces on each corner and angle iron braces inside the tool boxes, fastened with a total of 112 1/4" bolts per shelter. There are six strap hinges to each shelter fastened with a total of 36 1/4" bolts per shelter. There are 20 1/4" bolts used to hold wooden braces on each end of the shelters.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

In this craft dispute, Claimants contend that Carrier violated the Agreement when it authorized maintenance of way employes rather than Carmen to build two portable truck shelters with tool-box seats to be placed on trucks or other vehicles.

Claimants allege that they have always built said portable shelters and that said work has always been considered and recognized as Carmen's work; that under Rule 144, Carmen's Classification of Work Rule, the work here in question is contracted to Carmen.

Carrier's position is that Carmen do not have the "exclusive" right to build the shelters with tool-box seats in question; that the maintenance of way Agreement covers carpenters and painters; that the Carmen's Agreement contains an exception to bridge and building department work; that Rule 144 or any other rules do not make any reference to work on highway vehicles; that in the past, with the exception of 5 truck shelters and tool-box seats, the rest have been built by maintenance of way carpenters and painters.

The Carmen's Classification of Work Rule 144, the pertinent parts thereof, provides as follows:

"Carmen's work shall consist of building, * * * * * painting, * * * * * planning mill, cabinet and bench carpenters' work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; * * * * *"

In view of the fact that the language as used in said Rule 144 specifically includes the work in question, then we must determine whether or not the exception to said rule: "except work generally recognized as bridge and building department work" permits Carrier in this instance to assign the work of constructing these portable shelters to Maintenance of Way Employes rather than Carmen.

This Board has held that "bridge and building department work" means the construction, maintenance and dismantling of buildings and bridges. See Awards 1656 and 2360. However, past practice may be shown to prove whether or not such work as here in question may properly be performed by B & B forces rather than Carmen.

Carrier makes the mere assertion without corroborating proof that B & B forces have constructed seventeen out of twenty-two shelters with tool-box seats for use on 1 1/2 ton trucks on Carrier's Northern Region, and that the five shelters were built by Carmen. Mere assertions without corroborating proof are of no probative value. The Organization disputed said assertion of Carrier that said B & B forces have performed the work in question and submitted the signed statements of six carmen stating that Carmen have always performed such work. Thus, we have conflicting allegations as to past practice, and therefore we cannot conclusively conclude that by "past practice" the work involved herein has been generally recognized by bridge and building

department work. Therefore, Awards 2360 and 2363, cited by Carrier in support of its position, can be distinguished from the facts in this dispute.

In view of the fact that the language as used in said Rule 144 specifically includes the work in question, and finding that past practice cannot be used as a determinative to decide this dispute, we are compelled to sustain the claim at the pro rata rate.

A W A R D

Claim sustained in accordance with opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: **E. A. Killeen**
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.