

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

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

(1) That the Carrier erred by assigning to the Mechanical Department forces the work of constructing a cabinet and installing a new top on a desk in the Yard Office at North Little Rock between July 13 and 19, 1947;

(2) That B&B Carpenter Hoyt Lewis be allowed sixteen (16) hours pay at his regular rate on account of the Carrier's improper action in assigning the construction of a pigeon hole cabinet to Mechanical Department forces at North Little Rock Yard Office during the period July 13 and July 19, 1947;

(3) That B&B Carpenter V. J. Smith be allowed eight (8) hours pay at his regular rate on account of the Carrier's improper action in assigning to Mechanical Department forces the work of installing a new top to a desk in the Yard Office at North Little Rock.

EMPLOYES' STATEMENT OF FACTS: During the period July 13 to July 19, 1947, the Carrier assigned to the Mechanical Department forces at North Little Rock, Arkansas, the work of building and setting up a pigeon hole cabinet in the Yard Office, and also the installation of a new top on a desk in the Yard Office at North Little Rock, Arkansas.

The Carrier has a crew of Bridge and Building employees. There is a B&B Carpenter Shop at this location which has the necessary facilities for the performance of the work described above. These B&B employees were not assigned to perform this work. The time spent by the Mechanical Department forces in the building and installing of the pigeon hole cabinet was sixteen (16) manhours. The time spent in renewing the top of the desk was eight (8) manhours.

The agreement in effect between the two parties dated July 1, 1938, and its amendments and interpretations are by reference made a part of this agreement.

POSITION OF EMPLOYES: Scope Rule No. 1 states as follows:

"These rules govern the hours of service and working conditions of all employes herein named in the Maintenance of Way Department and sub-departments thereof (not including supervisory forces above the rank of foremen) as follows:

- (a) Bridge and Building Department:
 - Foremen
 - Assistant Foremen
 - Motor Car Operators in B&B Gangs

The claim of the Employes should be denied for the foregoing reasons.
Exhibit not reproduced.

OPINION OF BOARD: In July 1947, Carrier assigned to Mechanical Department forces the work of building and installing a pigeon hole cabinet and a new top on a desk in the Yard Office at North Little Rock, Arkansas. It is the contention of the Organization that Bridge and Building employes were entitled to this work, there being a Bridge and Building Carpenter Shop at this point.

The desk in question is described as a table on which the pigeon hole cabinet was set up for the convenience of the bill clerk in sorting and storing waybills. The table and cabinet were not attached to the building and were, therefore, office furniture in the sense that that term is ordinarily used. The question to be determined is whether the repair of office furniture is within the scope of the Maintenance of Way Agreement.

The applicable provisions of the scope rule provide that certain positions are covered by the Agreement, to wit: "Mechanics (carpenters and painters), helpers and laborers" in the Bridge and Building Department, and "all other employes performing work properly recognized as belonging to and coming under the jurisdiction of the Maintenance of Way Department." Scope Rule, current Agreement. The designation of carpenters in the Bridge and Building Department does not include expressly those engaged in repairing furniture. Office furniture is no part of the building in which it is placed and consequently we cannot say that it was included as work belonging to B&B carpenters by virtue of the controlling provisions of section (a) of the scope rule. If such work is within the scope of the Agreement, it is because of section (c) thereof, which reads: "all other employes performing work properly recognized as belonging to and coming under the jurisdiction of the Maintenance of Way Department." In other words, is the repair of office furniture properly recognized as belonging exclusively to Maintenance of Way employes?

An examination of the record reveals no conduct in the past that would sustain the Employes' position. There is evidence that Maintenance of Way employes do most of this type of work. There is evidence by a General Chairman that Maintenance of Way employes do 75% or more of this work. There is no evidence that all of such work is properly recognized as the exclusive work of Maintenance of Way employes. It has been partly performed by employes of other crafts in the past. This Board is not authorized to make a rule where one is lacking. We are obliged to say that Claimants have failed to establish their exclusive right to this type of work.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1949.