Award Number 4608

Docket Number MW-4652

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, 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) The the Carrier violated the Agreement by not assigning to the B&B forces the building and painting of two large material bins at North Little Rock, Arkansas in latter part of February, 1947;

(2) That B&B Carpenters W. L. Townsend and R. C. Lingo be compensated twelve (12) hours each at pro rata rates of pay on account of this violation of Agreement.

EMPLOYES' STATEMENT OF FACTS: During the latter part of February, 1947 the Mechanical forces at North Little Rock, Arkansas constructed and installed two material bins for use in the Store Room at this point. Both of these bins were made of wood and were of the following dimensions—one was 6'x10'x 2', the other was 6'x14'x2'. After the installation both bins were then painted by Mechanical forces. The approximate time consumed by the Mechanical Department forces in the performance of this work was 24 man hours.

W. L. Townsend and R. C. Lingo are regularly assigned B&B carpenters with headquarters at North Little Rock, Arkansas. These two claimants contend they were available and should have been assigned to the performance of the above referred to work. Accordingly, they have made claim for 12 hours each at the pro rata rate for B&B carpenter. The Carrier has denied this claim.

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

POSITION OF EMPLOYES: The scope rule of the effective agreement states as follows:

"SCOPE: 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
Water Service Foremen, Assistant Foremen, Repairmen, Helpers, Laborers and Pumpers

"(c) The construction and painting of cases, bins, racks and similar portable equipment;"

5. In progressing this claim in appeal the Employes have relied upon paragraph (f) of Section 3 of the Memorandum Agreement of September 15, 1941. For your ready reference, paragraph (f) of Section 3 of that agreement reads:

"(f) The painting of buildings, platforms, cases, racks and bins, whether of timber or metal, except such painting as is done in the Reclamation Plant and Shops as provided for in Section 1-(b) and 2-(c);"

POSITION OF CARRIER: It is the position of the Carrier that the wording Memorandum Agreement of September 15, 1941 (Carrier's Exhibit "A") is clear and understandable and that this Memorandum Agreement has been properly applied by the Carrier insofar as the construction of the bins is concerned. The Carrier's interpretation of the agreement is in keeping with what has been done ever since the agreement was placed in effect, without objection from the Maintenance of Way Employes until this claim was filed. The facts are not in dispute, and by making application of the Memorandum Agreement of September 15, 1941 to the facts in this case it should be clear that what the claimants are attempting to do, and what the Brotherhood of Maintenance of Way Employes is attempting to do, in progressing this claim, is to make a change in the Memorandum Agreement of September 15, 1941 without going through the procedures as prescribed by the Railway Labor Act, as amended.

It is further the position of the Carrier that if the Maintenance of Way Employes do not agree with the Carrier in its interpretation and application of the Memorandum Agreement of September 15, 1941, because the agreement is a tripartite agreement, they should have handled with both of the other parties to the agreement instead of handling with the Carrier alone.

The rule upon which the Employes rely in this case is as shown in the Carrier's Statement of Facts, i.e., paragraph (f) of Section 3 of the Memorandum Agreement, and attention is invited to the wording of that paragraph (f), which pertains only to painting and makes no reference whatever to the construction of the various items listed, which include bins.

Claim is without support under the existing agreement and is also without support under the practice in effect for many years, and should be denied.

Exhibits not reproduced.

OPINION OF BOARD: This is a claim that the construction and painting of two material bins should have been assigned to the Bridge and Building forces instead of to the Maintenance of Equipment Shop forces. The two groups of employes are represented by different organizations. Those organizations entered into agreement with the Carrier on September 15, 1941, of employes where the scope rules of their agreements overlapped. The pertinent provisions are:

For Bridge and Building forces:

"3. (e) The installation of cases, bins, racks and similar equipment and the construction and painting thereof, except as provided for in 1-(b) and 2-(c);"

For Maintenance of Equipment Shop forces:

"2. (c) The construction and painting of cases, bins, racks and similar portable equipment;"

It is the contention of the Organization here that only portable bins, etc., can be built by shop forces and that the bins here involved are not portable due to the size and the weight thereof. The Carrier agrees that shop employes

can construct only portable bins, etc., but contends that the bins are portable because they were moved from the shop where they were constructed to the storeroom where they were placed and painted.

The facts as to weight, size and moveability are factors in determining whether an article is portable but from the language of this agreement the most important factor is whether the article is to be installed in a fixed location or is to be moved about as the needs of the workmen demand. In each case it is a matter of factual determination. Here the size and weight indicate they were not intended to be moved about with any frequency and the placement of them in the storeroom indicates an installation in a fixed location. Hence it is our view that these bins were not portable and should have been constructed by the Maintenance of Way (Bridge and Building) forces.

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 Carrier violated the agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.