

Award Number 4612

Docket Number MW-4666

**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) That the Carrier violated the Agreement by not assigning to the B&B forces the building of three (3) large material bins at North Little Rock, Arkansas on or about March 26, 1948;

(2) That B&B Carpenters J. C. Bounds and V. C. Wickliffe be compensated 24 hours each pro rata at their respective rates of pay on account of this violation of Agreement.

EMPLOYES' STATEMENT OF FACTS: On or about March 26, 1948 the Mechanical forces at North Little Rock, Arkansas constructed three large material bins with doors attached in the Mill Room of the shop at this point. These three bins when completed were then moved to the paint shop nearby and there installed for the use of the electricians at that point. Each of these bins were approximately 6' wide, 3' deep, and 10' high, containing seven shelves and with doors attached. When set up in place they were joined together and made into one unit 18' long. This three section unit when completed would weigh approximately two tons.

The approximate time consumed by the Mechanical Department forces in the performance of this work was 48 manhours.

J. C. Bounds and V. C. Wickliffe are regularly assigned B&B Mechanics at North Little Rock. 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 twenty-four (24) hours each at their pro rata rate. 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 Statement of Facts.

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 employees herein named in the Maintenance of Way Department and sub-departments thereof (not including supervisory forces above the rank of foremen) as follows:

have, therefore, placed their own construction on the provisions of Decision MW-95, SC-95, which is Carrier's Exhibit "A".

POSITION OF CARRIER: It is the position of the Carrier that the wording of 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 Employees 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 Employees 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 Employees 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 mere fact that these bins were manufactured in the mill room and then moved to the Storeroom should be evidence in itself that the bins were portable. If they had not been portable they could not have been moved.

The claim of the Employees is not supported by rule. On the other hand, what the Carrier did in this instance not only followed the provisions of the Memorandum Agreement of September 15, 1941 but also followed the general practice which has been in effect and accepted by the Employees for many years.

The claim should be denied. (Exhibits not reproduced.)

OPINION OF BOARD: This claim is similar to that involved in our Award No. 4608 and disposition of it is controlled by our Opinion therein. Here three large bins were constructed in the shop and when placed in the paint shop were joined together. These facts show an installation in a fixed place and hence the bins may not be considered portable.

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 Employees involved in this dispute are respectively carrier and employees 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

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.