

Award No. 5914
Docket No. MW-5876

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the effective agreement when they permitted Signal Department employes to remove screens and install storm windows on the Airline Tower, West Chicago, Illinois, on or about November 29, 1949;

(2) The senior Bridge and Building Foreman, and senior Bridge and Building Carpenter and Helper, customarily assigned to the territory where the above referred to work was performed, be paid four (4) hours each, at their respective straight time rate of pay because of this improper assignment.

EMPLOYEES' STATEMENT OF FACTS: On or about November 29, 1949, Signal Department forces were assigned to remove screens, wash windows, erect storm sash and place the removed screens in storage at Tower B, West Chicago.

Under date of December 20, 1949, the Local Chairman of the Brotherhood of Maintenance of Way Employes, filed claim in behalf of one Bridge and Building Foreman, one Carpenter, and one Mechanical Helper, for four (4) hours pay at the pro rata rate, contending that the work performed by the Signal Department employes, was work comprehended in the assignment of employes in the Bridge and Building Department.

The Carrier contended that the above referred to work had never been assigned exclusively to any class of employes.

Claim was declined.

The agreement between the two parties to this dispute dated December 1, 1945 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: As previously stated, the Carrier assigned Signal Department employes the work of removing screens from Tower B, West Chicago and replacing them with storm windows. The Employes would have been completely unaware of such assignment except that the Signal Department employes performing the work, advised us of the facts.

is the case, the claim herein is incomplete, and properly should be brought for all work thus performed in alleged violation of the Agreement. This in turn would tend to prove the practice prevalent on the Carrier, and thus add proof to Carrier's contention that this isolated claim, the first of its kind, is truly nothing less than an attempt unilaterally to revise the current Agreement.

III. The Instant Claim Is in Effect an Attempt to Alter the Effective Agreement.

Because the effective Agreement does not provide a basis for the claim advance by the Organization and, in fact, past and current practices under this Agreement establish the direct contrary, the claim amounts in all respects to an attempt to change the existing Agreement.

The Railway Labor Act provides a specific formula by which requests for changes in agreements between carriers and representatives of their employees are to be progressed. By so providing specifically, Congress has ruled out all alternative methods of accomplishing changes in such agreements, and consequently the evident intention underlying the bringing of the present claim is to accomplish an act which is in contravention of the controlling law governing relations as to hours of service, rates of pay, and working conditions between the Carrier and its employees.

The Carrier therefore requests that the claim be denied, because (1) it is not supported by provisions of the Agreement between the parties; (2) practice on the Carrier is contrary to the premises on which the claim is based; and (3) to grant the claim would effect a change in the Agreement without compliance with the controlling provision of the Railway Labor Act, viz. Section 6.

Material herein has been discussed with the Organization, either in conference or in correspondence.

OPINION OF BOARD: Signal Department men were used to remove four screens from the windows on Tower B, West Chicago, and replace them with storm windows.

The Claimants contend that the taking down and putting up of screens and storm windows is the exclusive work of Bridge and Building Sub-department, therefore they are entitled to four hours' pay at the pro rata rate.

The pertinent parts of Rule 56. I, are as follows:

"(a) All work of construction maintenance, repair or dismantling of buildings, bridges including tie renewals on open deck bridges, tunnels, wharves, docks, coal chutes, smoke stacks and other structures built of brick, tile, concrete, stone, wood or steel, cinder pit cranes, turn-tables and platforms, highway crossings and walks, but not the dismantling and replacing of highway crossings and walks in connection with resurfacing of track, signs and similar structures, as well as all appurtenances thereto, loading, unloading and handling all kinds of bridge and building material, shall be bridge and building work."

"(b) An employe directing the work of men and reporting to officials of the railroad shall be classified as a foreman."

"(d) An employe skilled in and assigned to the construction, repairing or maintenance of buildings, bridges or other structures, including the building of concrete forms, erecting falsework, setting of columns, beams, girders, trusses and in the general constructional

erecting of steel bridges and buildings, and in the performance of related bridge and building iron work, such as riveting and rivet heating, or who is assigned to miscellaneous mechanic's work of this nature in bridge and building department shall constitute a bridge and building carpenter. Shop carpenter work shall consist of building and maintaining various office furniture, all millwork and other fine cabinet work coming under the jurisdiction of the Superintendent of Bridges and Buildings, and employes assigned to and performing such work shall receive five (5) cents per hour in excess of the highest rate received by carpenters at the point employed."

"(l) Helpers shall be employes who are assigned to assist the respective mechanics outlined in the foregoing paragraphs of this rule, and shall be required to provide only such mechanic's tools as may be necessary for them to learn the trade."

"(m) All work described under Rule 56 (I) shall be performed by employes of the B&B subdepartment, except as provided in Memorandum of Understanding dated November 8, 1939, and agreement with shop crafts effective April 3, 1922."

If the work is to come within Rule 56. I. (a), then it must come under the work of maintaining appurtenances to buildings of the Carrier. Common usage of the words "maintenance" and "appurtenances" as used in Rule 56. I. (a) do not contemplate the taking down and the putting up of screens and storm windows.

The last cited rule is ambiguous in so far as it covers the subject of this claim, therefore we must look to past practice under the rule.

We must consider whether or not the work of putting up and taking down screens and storm windows was exclusively given to the B&B Subdepartment. The record reveals that at Tower B, four screens were taken down, the windows washed, storm windows put up, and the screens stored by a signal maintainer and an assistant signalman from Traveling Signal Gang No. 2. That this type work had not been done by B&B men in the past at this tower, although at other places on the line it had been done by them. The use of storm windows and screens is seasonal and the time of putting them up and taking them down often depends on the dictates and comfort of the men working in the building.

From the facts as presented in the record, we cannot find that the work of putting up and taking down screens and storm windows after their initial installation and fitting was given to and done exclusively by B&B men. The practice on the Carrier's property shows that the work involved in this claim was not work given exclusively to the B&B Subdepartment although they did most of it. This work has partly been done by men in other crafts. The Claimants have failed to establish their exclusive right to this work. If they desire the exclusive right, they must negotiate a rule with the Carrier.

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: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of August, 1952.