

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned other than Bridge and Building sub-department employes to perform the work of constructing a Section Foreman's office and tool-house out of an old condemned freight car.

(2) That Bridge and Building Foreman C. T. Crawford; Assistant B & B Foreman T. C. Maddox; First Class Carpenters Manse Sullivan and J. R. Mann; Second Class Carpenters R. E. Jones and L. Chatfield; and B & B Laborers A. Chatfield, Robert Jordan, R. Lucas and J. Stanley each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by other forces in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The following Maintenance of Way employes comprised the Bridge and Building Force located at Macon, Georgia, during the period covered by this claim:

C. T. Crawford	— B & B Foreman
T. C. Maddox	— Assistant B & B Foreman
Manse Sullivan	— First Class Carpenter
J. R. Mann	— First Class Carpenter
R. E. Jones	— Second Class Carpenter
L. Chatfield	— Second Class Carpenter
A. Chatfield	— Laborer
Robert Jordan	— Laborer
R. Lucas	— Laborer
J. Stanley	— Laborer

The aforementioned force is known as a Terminal B & B Gang, without camp cars, and among other duties, their work consists of building, repairing, dismantling and general maintenance of Railway Company buildings and structures in, around and about Macon, Georgia.

All data submitted in support of Carrier's position in this case has been presented orally or by correspondence to the Employees or duly authorized representative thereof, and made a part of the dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants constitute the Carrier's Terminal B & B gang, their work consisting of general building, repairing, and maintaining of Carrier's property in and around Macon, Georgia. The Carrier removed a freight car from service and had it remodeled into a track foreman's office and tool house in the Car Shop by employees affiliated with the Brotherhood of Railway Carmen. Upon completion of the reconstruction the converted car was moved from the shop and placed on the site selected for it and was there placed on foundations by the claimants, members of the Brotherhood of Maintenance of Way Employees. They claim that the work of reconstruction should have been assigned to them.

The Carrier has raised certain procedural and jurisdictional issues, which, under the decisions of the courts and awards of this Board, we find without merit. In view of the fact that the claim must be denied on the merits, no useful purpose would be served by discussing these issues at length. The sole issue on the merits is whether the work in question properly belonged to the Bridge and Building forces.

There can be no question that under the Scope Rule the construction of buildings is work of the B & B employees. There can likewise be no question that repair, maintenance, modification, and similar work on rolling stock belongs to the Carmen. The sole difficulty here is in determining whether the work done was the modification of a freight car or the construction of a building. The employees argue that once a car is permanently removed from service, and its wheels and undercarriage removed, it ceases to be a car and becomes merely material for other use or for scrap.

The Carrier argues, on the other hand, that the car in question never ceased to be a car, that all that was done to it was to repair its existing sides and ends and floor, build in windows and doors, construct a partition, and otherwise make the car suitable for use as an office or tool house.

There is, quite apparently, logic in both these contentions. We are saved the necessity of choosing the more logical by reason of the fact that the Parties have settled the matter by past practice. It is well settled that the Scope Rule reserves to the Classes enumerated therein the usual work of several positions. The Carrier shows an invariable practice to have this type of work done by Carmen in the shop. It lists 63 instances of freight cars and coaches being converted in the shops to tool rooms, sleeping quarters, freight depots, offices, etc., over the past thirty-five or forty years.

The record contains no denial by the Employees of these facts. The Employees cite not a single instance of such work having ever been performed by B & B forces. The evidence of practice is determinative of the meaning given the Scope Rule by the Parties. It may be true, as argued by the Employees, that practice cannot have the effect of changing the Agreement. But it can and does have the effect of showing what the Parties, through the years, have interpreted the Agreement to mean.

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

That the Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1957.