

Award No. 9847
Docket No. MW-8842

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

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

1. The Carrier violated the effective Agreement when it assigned or otherwise permitted the Agent at Henry, Illinois to construct a filing and storage cabinet for Company records and materials;

2. B & B Mechanic Ruben Lester be allowed eight (8) hours' pay at his straight time rate, account of the violation referred to in part one (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Bridge and Building Mechanics historically and traditionally construct and maintain all structures required for the operation of this Carrier.

On or about March 18, 1955, the Carrier assigned or otherwise permitted their Agent at Henry, Illinois to construct a filing and storage cabinet for Company records and materials. This filing and storage cabinet is seventy-seven (77) inches high; fifty-four (54) inches in width; has two (2) doors and consists of six (6) shelves, each being sixteen (16) inches deep. The Carrier's Agent consumed eight (8) hours' time in the performance of this work, using company material in the construction thereof.

Claim as set forth herein was filed and the Carrier has declined the claim.

The Agreement in effect between the two parties to this dispute dated May 1, 1938, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

EMPLOYES' POSITION: The pertinent portions of Rule 1, Scope, provides:

"Rule 1. Scope. These rules will govern the hours of service and working conditions of all employes not including supervisory forces above the rank of foreman, performing work of a maintenance and construction character in Maintenance of Way Department (not including Signal, Telegraph and Telephone Maintenance Department, nor employes performing work of a clerical nature) and employes listed below:

An Agreement between the Carrier and the employes of the Carrier, represented by the Brotherhood of Maintenance of Way Employes, bearing an effective date of May 1, 1938, is on file with your Board and by this reference is made a part hereof.

POSITION OF CARRIER: The previous incumbent in the Henry agency had, for his own personal convenience, installed a cabinet in which he chose to keep certain materials and records. Apparently, upon leaving the position, he removed his personal cabinet from the building. The new incumbent, sensing the personal convenience which came from the presence of a cabinet in the depot, sought to have company forces construct a suitable wooden cabinet for his use. Because B & B forces were fully employed and occupied on more vital railroad construction and maintenance projects, construction of the cabinet was *not undertaken as soon as the agent preferred. He, therefore, in his desire to have a cabinet, secured lumber and materials without requisition or authority, and in his idle time, constructed the cabinet to his liking.*

Such construction was done without authorization. Scrap lumber left over from a previous project was used by the Agent, who is not a carpenter and who received no pay for his labor in constructing his cabinet. The completed cabinet did not conform to any company specifications. The cabinet was not authorized by company standards, in fact the cabinet was considered unnecessary for the efficient conduct of station work at Henry. The Company, contrary to Committees' statement, actually had no knowledge of the erection of the cabinet by the agent until after its completion.

The cabinet was not a structure or part of a building. Nor was it attached to any such structure or building.

In progressing this claim on the property, the organization has been unable to show that the construction of convenient office furniture is work belonging to and coming under the jurisdiction of Maintenance of Way employes. (Third Division Awards 4585, 4610, 4779). Yet this is precisely what is involved in this dispute.

The cabinet which the agent voluntarily constructed for his convenience is in the same category as a do-it-yourself invention or improvement which an ingenious and ambitious person may take to his job. For official purposes, the presence of the home-made wooden cabinet added nothing to the value of the premises. The Carrier did not gain or profit in anyway by the voluntary carpentry performed by the agent in his idle time.

Under the circumstances present in this case, it cannot be said that the agent's voluntary action in constructing an unauthorized wooden cabinet was a violation of the Maintenance of Way Agreement.

It is hereby affirmed that all of the foregoing is, in substance, known to the organization's representatives.

OPINION OF BOARD: The Record herein reveals that the cabinet in question was constructed by the Agent for his personal convenience. Moreover, the Record shows that the Agent constructed the cabinet without authority from the Carrier, either express or implied.

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 Employe involved in this dispute are respectively Carrier and Employe 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1961.