

Award No. 10217
Docket No. MW-9472

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(1) The Carrier violated its Agreement with the Brotherhood of Maintenance of Way Employes when, during the period March 28, 1955 to April 8, 1955, it assigned employes outside the scope thereof to perform the usual, customary and traditional work of Bridge and Building painters in painting the signal masts between Palmerton and Jim Thorpe, Pennsylvania.

(2) Each furloughed B & B Painter holding seniority on the Pennsylvania Division be allowed pay at their respective "straight time rates for an equal proportionate share of the total man-hours consumed by other classes of employes in performing the work referred to in Part (1) of this claim."

EMPLOYEES' STATEMENT OF FACTS: During the period March 28, 1955 to April 8, 1955 the Carrier assigned its Signal Department employes, who hold no seniority rights under the provisions of this Agreement, to perform the usual, customary and traditional work of Bridge and Building Painters in painting the Signal Masts between Palmerton and Jim Thorpe, Pennsylvania.

The Claimant Bridge and Building Painters, who have established and hold seniority on the Pennsylvania Division and who were furloughed in force reduction during the above referred to period, were available, but were not recalled to service to perform the above described Painter's work. The agreement violation was protested and claim filed in behalf of the claimants.

The claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated June 1, 1941, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 1 reads as follows:

[904]

3.—Employees in signal, telegraph, and telephone maintenance departments."

This rule states "* * * such employees shall perform all work in the M. of W. & Structures Department.", whereas the instant claim is for "painting the signal masts" which does not come within the aforementioned quote of "work in the M. of W. and Structures Department."

First, it will be noted the employees take the position that this is not a jurisdictional matter between the two Organizations. However, inasmuch as the Signalmen have taken the position this is their work, as found in Vice President Fields' letter of February 6, 1957, and the position of the Maintenance of Way Employees as evidenced by their claim that the painting of signal masts is their work, we do not know how this question can be resolved other than as a jurisdictional question, which your Honorable Board lacks jurisdiction to decide.

In the second place, the provisions of Section 3, First, (j) of the Railroad Labor Act, reading as follows, have not been met:

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employees and the carrier or carriers involved in any disputes submitted to them."

There is no question but what the Signalmen, who are performing the work which is claimed by the Maintenance of Way Employees, are "employees" who are "involved," therefore must be given "due notice of all hearings." Therefore, your Honorable Board must afford the Signalmen an opportunity to participate and present their views.

Third: should your Honorable Board decide that this case should not be dismissed for any of the reasons previously given, and assume jurisdiction, the Carrier contends that the Signalmen assigned to perform the painting of the signal masts was not in violation of any effective agreements and, therefore, a sustaining award is not warranted.

The Carrier affirmatively states that all data contained herein has been presented to the Employees' representatives.

OPINION OF BOARD: During the period March 28, 1955 to April 8, 1955 Employees of the Signal Department of the Carrier painted Signal Masts between Palmerton and Jim Thorpe, Pennsylvania. A claim for wage losses is made by the Brotherhood of Maintenance of Way Employees for furloughed Employees holding seniority on the Pennsylvania Division of the Carrier.

The Carrier takes the position that the painting of Signal Masts on the Pennsylvania Division involves a jurisdictional dispute between the Brotherhood of Maintenance of Way Employees and the Brotherhood of Railroad Signalmen — both of whom claim the work as being under their jurisdiction.

The record reveals a direct contradiction in respect to which Organization has performed the work of painting the Signal Masts here involved.

On the one hand — the Maintenance of Way Employees claim that the work of painting Signal Masts has always traditionally and historically been performed by its Employees under its Agreement with the Carrier.

On the other hand — the Brotherhood of Signalmen just as firmly claim that the painting of Signal Masts has been performed by Signalmen for many years and that such work is customarily and traditionally performed by Signal Employees.

The record further shows that conferences were held without success between the two Organizations and the management in an effort to resolve the issue.

The work involved herein is not reserved to the Claimants by specific reference in the Agreement between the parties and in view of the record it is our opinion that a jurisdictional dispute exists between the two Organizations which this Board is neither equipped nor empowered to decide and which it has constantly declined to entertain. We must therefore remand the claim before us for further negotiations between the parties.

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 Employee involved in this dispute are respectively Carrier and Employee 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 a jurisdictional dispute is involved, and the Board is without jurisdiction to reach a final determination.

AWARD

Remanded in accordance with foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of December, 1961.