

Award No. 10256
Docket No. MW-9470

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. La Belle, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ILLINOIS TERMINAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned other than B&B employes to remove lockers from its Springfield passenger station and to then move these same lockers to and install in the East Belt Car Barns.

(2) B&B employes E. E. Laco, A. Bohn, F. A. Koprek, G. G. Laco and J. R. Smolinski each be allowed eight hours' pay at their respective straight time rates account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Maintenance of Way and Structures Department Bridge and Building employes have historically and traditionally performed work of constructing, repairing, maintaining and dismantling of buildings, bridges or other structures.

On or about November 14 or 15, 1955, the Carrier assigned Car Department employes, who hold no seniority rights under the effective Agreement, to remove lockers from its Springfield, Illinois Passenger Station and to then move and install these same lockers at the East Belt Car Barn.

Claimants were available, qualified and willing to have performed this work as they had during the past, had the Carrier so directed.

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

The Agreement in effect between the two parties to this dispute dated April 1, 1952, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES': Rule 1, Scope, reads:

"Rule 1—Scope

The rules contained herein shall govern the hours of service, working conditions, and rates of pay of all employes in any and all Sub-Departments of the Maintenance of Way and Structures De-

the moving of lockers is not covered by the scope or classification rules, the moving of lockers by the mechanical craft was not in violation of the agreement between the Maintenance of Way Employees and the carrier. The carrier further respectfully requests the above claims should be denied.

It is affirmed that all data herein contained, in support of the carrier's position, has been presented to the Brotherhood in writing or in conference.

OPINION OF BOARD: This dispute arose when Carrier used Employees, other than B&B forces of the Organizations to remove lockers from its Springfield passenger station and the moving of said lockers and installing the same in the East Belt Car Barns.

The lockers involved were made of steel, were not attached to the building, nor were they connected together and it is obvious they were readily movable.

It is the contention of the Claimants that such work came within the jurisdiction of the Maintenance of Way Department: that it was of the kind and character which B&B Employees of the Maintenance of Way Department would be expected to perform, and with but a few exceptions, did perform.

Carrier maintains, "that the claim presented to the Board by the Petitioner is vague, indefinite, uncertain and not susceptible of ascertainment from the record. The specific date of performance of work allegedly in violation of Agreement is not disclosed, nor are the number of lockers moved, nor the number of men engaged in moving them, nor the time consumed in the performance, to be found in the record. Not even the occupational grade or rate of pay of Claimants can be ascertained. That part of Rule 2 of the Agreement quoted in the record, as pertinent, shows five occupational grades, but the category of Claimants is not revealed. Not even the method of moving the lockers, by rail, or highway, etc., is shown."

Carrier further asserts that in the past, it has used many crafts to move lockers, office furniture, et cetera, and while in some instances Maintenance of Way Employees may have been used to do this, they do not have rights to this type of work.

In this factual situation, it is essential to Petitioner's case that it prove by specific evidence or controlling rules that the disputed work belongs exclusively to the Claimants named. Our examination of the record satisfies us that the Petitioner has neglected to support its contentions by competent evidence. (Citing Awards 9963, 8092, 9001 and 5869.)

To hold otherwise, it would be necessary for the Board to make too many assumptions. The Board may be justified in leaving some things to assumption in some cases, but it would not be justified in leaving so many things to assumption as would be necessary for the resolution of the present case on the merits, on the record here presented. The present case must be dismissed.

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 Agreement was not violated.

AWARD

That the case should be dismissed in accordance with the *Opinion*.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1961.