

Award No. 11891
Docket No. MW-11465

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

INDIANA HARBOR BELT RAILROAD

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

(1) The Carrier violated the effective Agreement when, on March 26, 1958, it assigned other than its Bridge and Building employes to construct a platform to transfer roofing material from one car to another.

(2) Furloughed Bridge and Building employes John Gerk, Albert Lorenz and Foreman Blake each be allowed four (4) hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On March 26, 1958 the work of constructing a platform for the use of trackmen to transfer roofing material from one car to another was assigned to and performed by Car Department employes, who hold no seniority rights under the provisions of this Agreement.

The work was of the character that has heretofore been usually and traditionally performed by the Carrier's Bridge and Building employes.

The Claimant Bridge and Building employes, who were in furloughed status, were available and could have expeditiously performed the above referred to B&B work.

The Agreement violation was protested and the instant claim filed in behalf of the claimants. The claim was handled in the usual and customary manner on the property, but was declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated August 29, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this statement of facts.

tenance of Way Employes under Supplement No. 8 of General Order No. 27. Railway Board of Adjustment No. 2 issued Docket No. 2201 on December 14, 1920, and upheld the position of the Carmen's Organization when they said:

"Section 6 of Article 1 of 'Supplement No. 4 to General Order No. 27' contains the following language, '. . . and all other carpenter work in shops and yards'. This covers all carpenter work in shops and yards as the work of carmen, excepting carpenter work in connection with the erection of and repairs on buildings."

Award No. 1656 of the Second Division of the National Railroad Adjustment Board covered a dispute between the Carmen's Organization and the Atchison, Topeka and Santa Fe Railway involving a protest of that organization because Bridge and Building Department employes were used to paint some portable supply bins and upholsterers' work benches. In its Award the Board said:

"* * * We think Bridge and Building work means what the name indicates—that the construction, maintenance and dismantling of buildings is the work of the Bridge and Building Department. It would not, in the absence of agreement or practice, include the painting, varnishing or otherwise maintaining of furniture and equipment not attached to the building * * *."

The same principle is involved in the instant dispute. The building of the temporary platform was by no stretch of the imagination associated with the erection of and repairs to buildings but carpenter work "in shops and yards" and associated with carmen.

The Carrier contends the work involved was properly handled by carmen and there is, therefore, no merit in the Organization's claim and it should be denied.

All of the facts and arguments herein set forth have been presented to the employes either orally or through correspondence.

OPINION OF BOARD: The facts giving rise to this claim are uncontroverted. The Carrier permitted members of the Car Department to construct a platform between two cars to facilitate the transfer of the loading from one car, which was in bad order, to the other, which was a sound car.

The Organization avers that the Maintenance of Way Employes have the exclusive right to construct the platform or walk way erected by the Carmen, urging that under the Scope Rule, all such work is by its nature, and historically, Maintenance of Way Employes' work.

The Carrier relies on the temporary nature of the structure complained of, but an examination of the awards fails to lend support to that contention.

While the Scope Rule does not specifically describe all the work that falls within the Agreement, the Board upon the evidence presented must

conclude that the erection of this temporary structure by the Carmen constituted an invasion of the Maintenance of Way Employees' field, and therefore a sustaining award is warranted.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.