

Award No. 12098
Docket No. MW-11446

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) The Carrier violated the effective Agreement when, on or about November 17, 1958, it assigned a System Steel Bridge Gang instead of a Division Bridge and Building Gang to renew the ties and guardrails on Bridge 180.4 near Albany, Texas.

(2) Each of the Division Bridge and Building employees on the territory where the work was performed be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the System Steel Bridge Gang in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On or about November 17, 1958, the work of renewing the ties and guardrails on Bridge No. 180.4 near Albany, Texas was assigned to and performed by the Carrier's System Steel Bridge gang.

The work consisted of framing the new ties to fit the steel girders, the removal of the old guardrails and ties, the installation of the new ties and guardrails and other work incidental thereto.

The work was of the nature and character usually and traditionally performed by the Carrier's Division Bridge and Building gangs. In fact, the Division Bridge and Building gang, under the supervision of Foreman C. C. Smith, renewed the ties on two steel bridges during May and July of 1958 and unloaded the ties and guardrails at the steel bridge involved here. Although Mr. Smith had been instructed to perform the instant work, his Division B&B gang was abolished before the work could be started.

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

rule specifically lists the situations to which applicable it thereby excludes all those not included therein."

Award No. 4763 of the Third Division:

"This Board is without authority to revise or expand the Agreement between the parties, but must construe and apply agreements as the parties enter into them, and it has no authority to change them to avoid inequitable results. Awards 1248, 2612, 2765, 4259 . . ."
(Emphasis ours.)

Award No. 5294 of the Third Division:

"It is the function of this Board to interpret, not to write, agreements. We see no way of disposing of these claims without either reading new words into Rule 48 or deleting it from the Agreement altogether." (Emphasis ours.)

Award No. 5971 of the Third Division:

"We must recognize that we are without authority to amend present rules or write new ones into the agreement. It is our opinion that a sustaining award here would write exceptions to the rules which would amount to more than an interpretation of existing rules."
(Emphasis ours.)

As the Board is without jurisdiction to change the agreement in a manner essential for the agreement to support a decision of the Board, and the Board is without jurisdiction to grant the relief requested, the Carrier requests the claim be denied in its entirety.

All data submitted in support of the Carrier's position have been heretofore submitted to the Employees or their duly accredited representatives.

The Carriers request ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a Scope Rule case. The Scope Rule is general—ambiguous. In such cases we have consistently held that in order to prevail the Petitioner must prove by a preponderance of the evidence that

the work involved must have been historically, customarily and usually performed, exclusively, by Claimants. Petitioner failed to satisfy this test. We will deny the claim.

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 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 24th day of January 1964.