

**Award No. 13045**

**Docket No. MW-12610**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Benjamin H. Wolf, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**CHICAGO, ROCK ISLAND AND PACIFIC  
RAILROAD COMPANY**

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

(1) The Carrier was in violation of the Agreement when it assigned or otherwise permitted Mechanical Department employees to dismantle, remodel and rebuild the linen storage cabinets at the old upholstery shop at the 49th Street coach shop and to construct new storage racks and shelving for the new upholstery shop at the 49th Street coach shop.

(2) B&B employees Frank Haase, Frank Riha, Albert Irvine, Jr., Joe Silhavy, Joe Difanis, Michael Errico and John Hannigan each be allowed pay at his respective straight time rate for an equal proportionate share of the 162 hours consumed by mechanical department forces in performing the work referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** On January 29, 1960, one (1) mechanical department employee consumed four (4) hours in performing the work of taking down and dismantling linen storage cabinets at the old upholstery shop at 49th Street Shops.

Two mechanical department employees each consumed three (3) eight-hour days on February 1, 2 and 3, 1960 in performing the work of cutting up the old lumber, remodeling and assembling those same storage cabinets.

Two mechanical department employees each consumed seven (7) eight-hour days on February 29, March 1, 2, 3, 4, 7 and 8, 1960 in performing the work of building storage racks and shelving and assembling same at the new upholstery shop at 49th Street coach shop.

As Division Chairman Hunter stated in his appeal letter to Superintendent George Voss:

For these reasons Carrier respectfully requests your Honorable Board to deny the claim of employees.

**OPINION OF BOARD:** The Organization claims the right to dismantle, remodel and rebuild linen storage cabinets and to construct new storage racks and shelving by virtue of the Scope Rule which governs all employees "performing work of a maintenance and construction character in Maintenance of Way Department (not including Signal, Telegraph and Telephone Maintenance Department nor employees performing work of a clerical nature) . . ."

The Scope Rule also includes:

**"BRIDGE AND BUILDING MAINTENANCE**

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Employees in this department include those used in the construction and maintenance of all structures required for the operation of the railway, and all concrete work, construction of walks, platforms, crossing gates, scaffolding, etc., except signals, telegraph and telephone lines."

This Board has held in cases on this property that work within the Scope of this Agreement may not with impunity be given to anyone not covered by the Agreement. See Awards 3219, 4601, 4390, 6063, 6662. The problem we have before us is whether this work was work within the Scope of the Agreement. The burden of the Scope Rule is that work relating to construction and maintenance of a "structure" belongs to the Employees. Essentially, a "structure" is a building, a construction affixed to the realty. Not everything in a building becomes part of the structure. In Award 4585 (Carter), for example, we held that office furniture is no part of a building. See also Awards 10687 (Mitchell) 4610 (Whitney), 4779 (Stone), 10256 (La Belle).

In the absence of specific language in the Scope Rule, the Organization has the burden of proving that the work denied them was part of the structure or was part of the "etc." in the rule. This it has failed to prove. It argued that it taxes sound logic and reason to say that a Bridge and Building carpenter is given the work of constructing a building but not shelving. This argument, however, begs the question which is whether the shelving was part of the building. The record indicates that they were more than shelves. The claim, for example, refers to them as "storage cabinets". The cabinets were dismantled, the old lumber cut up and rebuilt apparently away from the place where they were to be used and later moved there and assembled.

The Organization concedes in its Reply that shelving is not always a structure but stated that in this instance because of its size, weight and lack of portability, "it certainly represents a structure or part of another existing structure." Portability is not the test of whether an article is a structure or becomes part of another structure. The answer, it would seem, lies in whether it becomes an integral part of the building and no longer can be deemed furniture or equipment. It is in this respect that the record fails to supply an answer and we must, therefore, hold that the Claimant has failed to sustain its burden of proof.

**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 Employes involved in this dispute are respectively Carrier and Employes 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**

Claim denied.

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

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1964.