

Award No. 13827

Docket No. MW-13998

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned the work of dismantling and removing wooden bins in the store room at New Car Shops at DuBois, Pennsylvania to employees holding no seniority in the Carrier's B&B sub-department.

(2) B&B Carpenter W. A. Tankalavage be allowed sixteen (16) hours' pay at his straight-time rate because of the aforesaid violation".

EMPLOYEES' STATEMENT OF FACTS: The claimant has established and holds seniority as a Carpenter within the Bridge and Building Department.

The Carrier decided to replace the wooden material bins located in the basement of the Store room at the New Car Shops, DuBois, Pennsylvania, with sectional metal material bins. On February 2 and 3, 1960, the work in connection with the dismantling and removal of the wooden material bins was assigned to and performed by Store Department employees, who consumed a total of sixteen (16) man-hours in the performance of said work.

The wooden material bins were originally constructed by the Carrier's Bridge and Building employees. They were constructed so as to fit between and around the concrete posts, pillars and beams in the basement, thereby necessitating the complete dismantling thereof before their removal could be accomplished.

The claimant was available, willing and well-qualified to have performed the subject work had the Carrier so desired.

The parties have agreed that the time limit within which to institute proceedings to the Board on this case are extended to May 15, 1963.

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The scope rule reads:

"(a) These rules govern the hours of service and working con-

The Findings in Award in Docket 13 read in pertinent part as follows:

"Involved here is the painting of two large tool boxes in Carrier's Coach Shop. Organization concedes they are not attached to the building. They rest on the floor.

Organization relies on Award 8093. The tool boxes, or lockers, here involved cannot be classified as material bins or tanks.

And on the basis of the facts here, these lockers cannot be considered to be railroad structures within the meaning and intent of Rule 1.

It awards to B&B forces the * * * painting * * * required in the construction and maintenance of railroad structures.

* * * ,

The claim will, therefore, be denied."

In the instant case there is no valid claim coming from employees under the scope of the Agreement with the Brotherhood of Maintenance of Way Employees. This claim in all its parts is wholly without merit and should be denied. The Carrier respectfully requests that this Division so rule and that the claim in its entirety be denied.

OPINION OF BOARD: After Carrier's decision to replace some wooden material bins, which were located in a storeroom, with metal ones was made, it assigned the dismantling and removal work to Store Department employees. The time required to perform the task was sixteen hours.

Petitioner alleges a violation of the agreement and asserts that the work described should have been assigned to employees of Carrier's Bridge and Building sub-department. Claimant, as a Bridge and Building sub-department carpenter employee, seeks pay for the time involved.

The pertinent portion of the Scope Rule of the applicable agreement between the parties, provides:

* * * * *

"(b) This Agreement does not apply to:

* * * * *

"6. The following work when performed by other than B&B forces:

* * * * *

"(b) Maintaining and painting material bins and tanks within store rooms or oil houses."

Rule 1 (c) of the same agreement states:

"Carpentry, painting, glazing, tinning, roofing, bricklaying, paving, masonry and concreting required in the construction and main-

tenance of railroad structures, other than tunnels, shall be performed by B&B forces . . ."

After carefully studying the two quoted rules we are of the Opinion, and we so find, that the exclusive right to perform all work connected with material bins located within storerooms did not lie with Carrier's B&B forces, therefore, its assignment of dismantling work on those bins to other employees was not a violation of the agreement. 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 herein; and

That the 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 6th day of August 1965.