

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

P. M. Williams, Referee

---

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**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 a wooden shed located outside the Car Department Storehouse at Benwood, West Virginia to employees who hold no seniority in the Carrier's B&B Sub-department.

(2) Carpenter Foreman C. R. Kiger and Carpenters R. L. Lamley and E. L. Evans each be allowed eleven (11) hours' pay at their respective straight time rates because of the aforesaid violation.

**EMPLOYEES' STATEMENT OF FACTS:** On July 27 and 28, 1961, employees of the Stores Department were assigned to perform the work of dismantling a material shed located outside the Car Department Storehouse at Benwood, West Virginia. The dimensions of this structure were 50 feet by 8 feet.

The employees of the Stores Department consumed a total of thirty-three (33) hours in the performance of the subject work.

This material shed was constructed by B&B forces more than thirty-five (35) years prior to the dismantling thereof and all of the maintenance and repair work on this structure was thereafter assigned to and performed by B&B forces.

The parties have mutually agreed to extend the time limit for instituting proceedings on this claim to this Division 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:** Rule 1(c) reads:

**"BRIDGE, BUILDING AND STRUCTURAL WORK**

Carpentry, painting, glazing, tinning, roofing, plastering, brick-laying, paving, masonry and concreting required in the construction

such as dismantling certain portions thereof to permit replacement, remodeling or relocation. For example, flooring, siding, doors, windows, etc., which require replacement or which are to be remodeled must first be dismantled before any removal or remodeling work can be performed. The same holds true with respect to dismantling a railroad structure as the initial step in its relocation and reconstruction at some other location. Thus, dismantling work is so intimately related and incidental to maintenance work necessary in the relocation and reconstruction of a railroad structure that it becomes an inherent and integral part of such maintenance of railroad structures.' Yet the record before us offers no evidence that the ramp here at issue was ever 'reconstructed' at its original or a new location. Carrier avers that 'at the present time the debris has not as yet been salvaged, although the condition of the debris is such as to preclude this construction of a new ramp from the salvage.'

On the basis of the record here made we must and do conclude that the organization has failed to prove that the ramp in question was reconstructed at some other location; that the organization has failed to prove this Carrier's action on June 29, 1954 was violative of the applicable Agreement. Awards 6879 (Coffey) and 6910 (Rader).

\* \* \* \* \*

That the Agreement was not violated.

#### AWARD

Claim (1) and (2) denied."

The Carrier submits that the holding reached by this Division in its Award 8094 is directly and immediately applicable to the instant case. Certainly the shed in this case was never "relocated" or "reconstructed" at its original or any other location. The element of its complete deterioration and dilapidation alone precluded any such "reconstruction" or "relocation." Accordingly, as was held in Award 8094, the Carrier submits that in the instant case " \* \* \* the Organization has failed to prove this Carrier's action \* \* \* was violative of the applicable Agreement."

In summary, the Carrier submits that 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:** On July 27 and 28, 1961, two Stores Department employees at Benwood dismantled a 50 foot by 8 foot wooden shed which had been used for storage of material. The shed was located outside the Benwood Car Department storehouse. From the description given we find that the mentioned shed was a material storage located within the confines of a store yard.

The Claimants hold seniority in Carrier's B&B Department. It is not necessary in this award that they should also be described as a Carpenter Foreman and two Carpenters since their classification is not necessarily controlling and did not assist us in arriving at our result.

The Brotherhood charges that its agreement with Carrier was violated when the described work was assigned to employees holding no seniority

in the B&B sub-department. It requests eleven hours' pay for each Claimant. Because Carrier admits the time spent dismantling the material storage required 22 hours and having had no probative proof to the contrary submitted, we find that the time required was 22 hours.

The applicable rules of the Agreement provide as follows:

"SCOPE RULE.

(a) These rules govern the hours of service and working conditions of all employes in the Maintenance of Way and Structures Department, and the following classes of employes in the Transportation Department, subject, however, to the exceptions provided in paragraph (b) of this rule:

\* \* \* \* \*

(b) This Agreement does not apply to:

\* \* \* \* \*

5(a) Work which is to be performed under contracts let by the Company under any one or more of the following circumstances:

1. By reason of the magnitude of the project.
2. Because of the requirement of special skills necessary in connection with performance of the work.
3. Where equipment or facilities to be used in connection with the work are not possessed by the Company and available, consistent with requirements for a particular project.
4. Where the work with Company forces would limit the extent of the supplier's guarantee.
5. The time within which the work must be completed as related to other projects.
6. Employes covered by the agreement on the seniority district involved cannot be assigned to the work without impeding the progress of other projects.

5(b) Should the employes question the judgment of the Company in contracting work, under the circumstances set out above, the General Chairman may handle such protest in accordance with the provisions of Rule 49 of this agreement.

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

(a) Minor repairs to roundhouses, storehouses and other shop buildings and material storages within the confines of the shop or store yards pertaining to safety, when B&B forces are not available, such as repairing broken boards in floors or platforms, and installing window panes.

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

(c) Placing of bearings for heavy material where solid platforms are not required.

(d) Any white-washing of structures within the confines of the shop yard or stores yard.

#### RULE 1. CLASSIFICATION

\* \* \* \* \*

(c) Bridge, Building and Structural Work.

Carpentry, painting, glazing, tinning, roofing, plastering, brick-laying, paving, masonry and concreting required in the construction and maintenance of railroad structures, other than tunnels, shall be performed by B&B forces. Such work in tunnels and all concreting by the gunite method shall be performed by tunnel forces.

\* \* \* \* \*

We are of the opinion that a reasonable construction of the quoted rules discloses that the parties to the Agreement intended to give all work relating to, inter alia, material storages exclusively to B&B forces, except for minor repairs pertaining to safety which could be assigned to other employees when B&B forces were not available and the exceptions contained in 6 (b), (c) and (d). Assisting us in our result is the line of awards of this Division which have found that when exceptions to a rule are spelled out with clarity, they are exclusive and further exceptions should not be implied.

Carrier's statements that the material storage was "dilapidated and in a state of complete disrepair" and "was in imminent danger of collapse" are not persuasive so as to place the dismantling task within the exceptions of the Scope Rule.

It is our finding that the Agreement was violated by Carrier; therefore, the Claimants should be compensated for any time which was lost by them as a result of not being called to perform the instant work for the hours required on the days mentioned.

**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 Carrier violated the Agreement.

#### AWARD

Claims sustained in accordance with above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1965.