

**Award No. 14877**  
**Docket No. MW-15753**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Gene T. Ritter, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD  
COMPANY**

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

(1) The Carrier violated the Agreement when a coach shop employe was assigned to install a table top in the Round House back shop at Burnham, Colorado on July 6 and 7, 1964. (Carrier's file MW-24-64).

(2) B&B Carpenter H. C. Brockman be allowed eight (8) hours' pay at his straight-time rate because of the aforesaid violation.

**EMPLOYEES' STATEMENT OF FACTS:** On July 6 and 7, 1964, an employe from the coach shop performed the work of placing a new top (46" x 14'6") on a table in the back shop of the round house at Burnham, Colorado. Work of this character comes within the scope of our agreement and, in the past, has been performed by employes holding seniority in the B&B Department.

Claim was timely and properly handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties dated February 1, 1941, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

**CARRIER'S STATEMENT OF FACTS:** This claim was commenced:

"Aug. 3, '64

"Mr. A. C. Black, Div. Eng.  
2125 15th St.  
Denver, Colo.

August 11, 1965, Mr. S. H. Schulty, Executive Secretary, N.R.A.B., Third Division, notified Carrier of Employees' intent to file ex parte submission on this matter, bringing this claim before your Board.

The Agreement here involved is the Agreement between the parties effective February 1, 1941, including changes and interpretations to date of reissue March 1, 1952, rates of pay effective February 1, 1951, and subsequent Memorandum Agreements in effect on the dates of this claim on the property.

**OPINION OF BOARD:** On July 6 and 7, a coach shop carpenter (an employee not covered by Claimant's agreement) performed the work of placing a new top on a table in the "back shop" of the Round House at Burnham, Colorado. B&B Carpenter Brockman made claim for four hours for each day in question, or a total of eight hours.

Carrier confronts this Board with a procedural question by contending that the "statement of claim" presented on the property is not the same claim that is presented to this Board. Carrier makes this contention for the reason that the phrase "... is work that belongs to carpenters in the B&B department . . ." contained in the claim on the property, has been deleted from the claim as presented to this Board, and that therefore, the "statement of claim" before this Board has not been handled on the property. This Board does not agree with Carrier's contention in this regard. The record discloses that the claim before this Board contains the substantive matter handled on the property; that the Carrier has not been misled in Claimant's basic contention; and the claim has not been enlarged since the handling on the property. In Award 18229 (Hall), this Board said:

"... Though the first paragraph of the Statement of Claim presented to this Board is not couched in the identical language used in the claim originally presented to the Carrier on the property it raises substantially the same issue as originally raised. It cannot, therefore, be seriously urged that the Carrier has been misled as to the issue or claim confronting it. Unless there is a real and substantial variance between the claim presented to this Board and the one presented to the Carrier on the property, this Board would not be justified in dismissing this claim; therefore, the request for a dismissal of this claim is denied. See Award 3256 — Carter; Award 6656 — Wyckoff."

Carrier's request to dismiss in this instance is likewise denied.

The conclusion to deny Carrier's request to dismiss brings us to consideration of this claim on its merits. In order to sustain this claim, it would be necessary to find that the Scope Rule in the agreement defines the work as exclusive to the Brotherhood; or that members of the Brotherhood have performed this work exclusively in the past. The burden of proof is on the Claimant in these respects. (Award 12972 — Hamilton) In this matter, the Claimant has wholly failed to meet this burden. To the contrary, the record discloses that the "Scope Rule" does not define the work in question as being "exclusive". Too, the evidence fails to show that past practice, on this property, ever recognized this type work to be exclusive B&B work.

Prior Board awards, involving similar disputes between these same two parties have consistently denied similar claims. See Award 7050 — Wyckoff

(installing crossing planks); Award 80922 — Lynch (moving telephone booth); Award 11118 — Sheridan (making additions and alterations to shop); Award 11231 — Sheridan (grading roadway); Award 11831 — Dorsey (erecting fence); Award 12972 — Hamilton (installing floor tile and door repair); Award 13987 — Dolnick (installing floor tile and constructing and painting partition); Award 14507 — Zack (hanging doors). Also in Award 4585 — Carter, which was cited with favor in Award 13045 — Wolf, this Board defined a "structure" as a building and a construction affixed to realty and held that office furniture is no part of a building.

Therefore, this Claim must be denied.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 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 21st day of October 1966.