

Award No. 18951
Docket No. MW-16321

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

NORFOLK AND WESTERN RAILWAY COMPANY

(Involving Employees of the Former Wabash Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned Car Department employees instead of B&B Department employees to construct and erect a small office building in the Steel Plant at Decatur, Illinois, to house Car Department Personnel (Carrier's file 118.15 118.31).

(2) B&B Foreman C. L. Walker, B&B Leadman Marvin Cook, B&B Carpenters Tom Lewis, John L. Dunham, E. T. Rusk, John D. Janssen, R. L. Stephenson, B&B Helpers William M. Cook and D. R. Stiles each be allowed eight (8) hours' pay at their respective straight-time rates account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On or about December 1, 1964, the Carrier assigned or otherwise permitted Car Department employees, who do not hold any seniority within the B&B Department, to perform the work of building an office of pre-fab type construction and to assemble same, complete with floor, roof, windows, doors and built-in desks, within the steel plant at Decatur, Illinois. Work of this character has historically and traditionally been performed by employees of the B&B Department.

The claimants, who are listed within part two (2) of our Statement of Claim, have established seniority in their respective class within the B&B department, were willing, qualified and available to have performed the subject work if the Carrier had so desired.

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

The Agreement in effect between the two parties to this dispute dated December 1, 1963, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On or about December 1, 1964, two carmen (carpenters) prefabricated a small portable office (a collapsible box type structure) four (4) feet wide, sixteen (16) feet long, and eight (8) feet high, of 2 x 4 framework covered with $\frac{3}{4}$ inch plywood, having two (2) doors and two (2) windows in each side, the windows and window frames being salvaged from an old passenger coach.

The structure in question was made in several pieces in the Car Department Wood Mill Shop at Decatur, Illinois in a manner enabling those pieces to be fastened or clamped together by the use of hooks built into the individual sides and ends. It was not designed as and is not a permanent fixture to the Steel Shop. Rather, it is a collapsible structure and may be taken apart without the use of tools and easily moved by the men in the Steel Plant without the use or assistance of equipment.

The total time required in the construction of the structure in question did not exceed sixty-four (64) man hours.

After the construction of the box type structure in question, it was set up in the center of the Steel Plant at Decatur, Illinois (a Car Department building where railroad cars are built or reconstructed) and while that box-type structure was fabricated with a floor, it was not fastened to the floor of the Steel Plant and can be moved.

The two carmen who fabricated the box-type structure in question are represented by the Brotherhood of Railway Carmen of America and are subject to an agreement between the Wabash Railway Company and its employees in the Locomotive and Car Departments (Mechanical Department) represented by organizations comprising System Federation No. 13, Railway Employees' Department, A.F. of L., including the Brotherhood of Railway Carmen of America.

All of the Bridge and Building Sub-department employees for whom claim is presented for "eight (8) hours' pay at their respective straight-time rates" as presented in item 2 of the Employees' ex parte Statement of Claim were both employed and under pay during the time the work in question took place.

Copy of all of the correspondence had between the parties to this dispute commencing with the initial presentation of the claim by the General Chairman to the Decatur Division Engineer is attached hereto and made a part hereof, marked Carrier's Exhibit "A."

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier contends that this claim presented to the Third Division has not been handled on the property in the manner prescribed by Section 2, Second of the Railway Labor Act, due to the fact that no conference was held "between the representatives designated and authorized so as to confer, respectively, by the Carrier or Carriers and by the employees thereof interested in the dispute".

The record indicates the General Chairman made no request for a conference to discuss the claim following the Manager-Personnel's declination thereof in letter dated August 24, 1965. The Board has previously held that a conference is essential to confer jurisdiction upon it.

The case is dismissed for lack of jurisdiction.

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 does not have jurisdiction over the dispute involved herein.

The Claim is dismissed for lack of jurisdiction.

AWARD

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1972.