Award No. 19095

Docket No. MW-16317

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, 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 its Agreement with the employes represented by the Brotherhood of Maintenance of Way Employes when it assigned employes outside the scope thereof to perform "Bridge, Building and Structural Work" such as is described within Rule 1(c) of the aforesaid Agreement. (System Case No. 253).

(2) B&B Mechanic George O. Gregory be allowed fifty-two (52) hours of straight-time pay because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: At Stock Yards, Ohio, the Carrier has a structure which is the body of a discarded Pullman sleeper car which has been placed on a concrete foundation. This structure was being used as a dormitory for train service employes. The work of building the concrete foundations and the work of placing the car body thereon, as well as all subsequent work thereon, has been performed by the Carrier's B&B forces until October 15, 1964 when the Carrier unilaterally assigned employes outside the scope of the controlling agreement (roundhouse employes) to perform the work of remodeling the structure so as to convert it to a classroom. On October 15, five (5) roundhouse employes worked eight (8) hours each and on October 16, three (3) roundhouse employes worked four (4) hours each, a total of fifty-two (52) hours. The work consisted of removing all seats, berths and sheet metal partitions between each berth.

B&B Mechanic G. O. Gregory holds seniority within the B&B sub-department, is covered within the scope of the Agreement and was fully qualified, willing and available to have performed the aforementioned work, if the Carrier had so desired.

Claim was timely and properly presented and handled by the Employes 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 April 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

OPINION OF BOARD: Carrier had wheels and other rolling stock appurtenances removed from a Pullman sleeper car and the car was placed on a concrete foundation and used as a dormitory for train service employes. The task of building the concrete foundation, of placing the car body thereon and other subsequent work thereon was performed by Carrier's B&B forces until October 15, 1964 when Carrier had carmen remove all seats and berths and the partitions between berths. The changes were made so that the dormitory could be turned into a room for class and demonstration purposes.

Carrier insists that it had a right to use carmen to remove the seats and partitions and Carrier calls our attention to that part of Rule 138 of the Carmen's Special Rules, reading as follows:

> "* * * Carmen's work shall consist of building, maintaining, dismantling * * *, painting, upholstering and inspecting all passenger and freight cars * * *"

Organization alleges that B&B men have maintained the structure since they built the foundation and placed the car thereon and Organization relies in part on Rule I which sets out the classes of employes coming within the Maintenance of Way and Structures Department and covers work in the construction and maintenance of railroad structures.

Carrier argues that Rule I never had any application to work done on a passenger or freight car.

A question for us to resolve is whether the sleeping car lost its identity as such when the draw bar, trucks, brake staff, etc. were removed from it and the body of the car was placed on a concrete foundation constructed by B&B forces. We think the "car" may no longer be regarded as rolling stock and has taken on the identity of a structure or building.

In Second Division Award No. 4687, Carrier contended that it properly used employes of the Maintenance of Way Department to make repairs and remodel a car used by yardmasters as an office and that the car body was, in fact, an office building. In that case carmen claimed the work belonged to them but the Board dismissed their claim stating in part:

> "Again we must repeat what the Board held * * * in Second Division Award 4604, namely, 'The function or use of the equipment determines its purpose and proper nomenclature.' "

Our review of the case persuades us that the disputed work is work belonging to B&B forces, that thirty hours were used by other than B&B forces in performing the work and that Claimant, B&B Mechanic George O. Gregory should be allowed thirty hours of straight time pay.

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 violated.

AWARD

Claim sustained to the extent of thirty hours of straight time pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. KILLEEN
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.

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