

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19470
Docket Number MW-17355

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Atchison, Topeka and Santa Fe Railway Company
(- Coast Lines -

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

(1) The Carrier violated the Agreement when, on January 18 and 19, 1965, it assigned or otherwise permitted other than B&B forces to remodel six (6) sets of concrete steps ("excavate, chip existing steps, form, mix, pour and finish concrete platforms approximately 3' x 3' x 7" deep in conjunction with the bottom step") within the Diesel Shop at Barstow, California. (Carrier's File 130-234-28)

(2) B&B Foreman D. E. McKee and B&B Mechanics C. W. Dickerson, C. Madsen and R. Mares each be allowed nine (9) hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: Shop Extension Sheet Metal Workers of the Mechanical Department performed the work of installing a circulating and drain piping complete with pumps for distribution and draining lubricating oil on all ramps in the Diesel Shop at Barstow, California. These Sheet Metal Workers placed two pipelines across the entrance to the stairs entering the depressed pits in the Diesel Shop. The concrete stairway was extended for a distance of 3 feet. Carrier contends that it was necessary to place concrete between the pipes and the first step in order to eliminate the hazard of injury. The Organization contends that the new steps was part of the structure and had nothing to do with pipes. The Organization further contends that the pipe was not covered, but that the steps were brought up to the pipe. A study of the exhibits involved in this case reveals that the pipe was not covered, but that the concrete steps were extended by placing the concrete slab between the pipe and the first step. The exhibit also reveals that it was necessary to place the concrete slab in question in order to alleviate a safety hazard. The new step became a part of the structure, and, therefore, a part of the building. This new step, or concrete slab, also was connected because of the placement of the pipes. This Board can not agree that this was merely a "concrete slab" and not a "step". By elevating the concrete above the pipe and extending it to the first step, this platform certainly

became a step. This Board also can not agree with the Organization that the concrete slab, or step, had nothing to do with the pipe. We believe that the argument between the parties as to whether this was a platform or a step is a distinction without a difference.

Carrier places great weight in support of its argument on Award 19373 (Edgett). This Award is not in point in this case for the reason that it was recited in Award No. 19373, as one of the controlling reasons for denying the claim in that instance, that insufficient forces were available at the time which made it necessary to use B&B Employees. That is not the situation in this instance.

This Board finds that the involved concrete in its finished form was elevated above the pit floor; was extended from the pipe a distance of three (3) feet; was connected to the existing stairs; and thereby became one of the stair-steps which was an integral part of the structure. This concrete slab may have been placed there in order to alleviate a safety hazard, but, nevertheless, became a step. Carrier contends that the Scope Rule in this case is general in nature, and, therefore, the right of Claimants to the involved work is dependent upon their proof of exclusivity by history, practice, and tradition on a system wide basis. For the reason that this is the first violation of this type alleged by this Organization, it would be an impossible burden to require such proof. The involved work is work customarily performed by Maintenance of Way Employees. This work is not customarily performed by Shop Craft Employees. The involved work was an extension of a structure, and under authority of Award No. 19306 (Devine), this claim will be sustained.

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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. H. Killen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1972.