

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21084**
Docket Number **MW-21052**

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Burlington Northern Inc.

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

(1) The Carrier violated the Agreement when it assigned other than Bridge and Building Department employee to assemble and repair shelves and racks **in** the Material Department store room at Livingston, Montana **from** September 10 through October 11, 1973 both dates inclusive. (System File **B-RM-113C/MW-84(c)-3, 1/4/74**).

(2) First Class Carpenter Sig Swanson and Second Class Carpenter Bill Garcia each be allowed one hundred ninety-two (192) hours of pay at their respective straight-time rates because of the aforesaid violation.

OPINION OF BOARD: Claimants are carpenters who object to Carrier's assignment of sheet metal workers to assemble and repair free-standing metal shelves and racks in the storeroom at Livingston, Montana. Claimants have submitted evidence tending to show that **Bridge** and Building forces have **performed** similar work at Livingston in the past. Carrier does not take serious issue with Claimant's assertion, as it applies to Livingston. Carrier does take issue with Claimant's view of practice as it applies to the former **NP**, and has submitted evidence that at other locations the work sought by Claimants was not performed by B & B forces.

An Award by the Second Division (6544) involved a claim at the same shop and was concerned with the assembly of similar freestanding metal shelves and racks. The Second Division, based upon its interpretation of the Sheet Metal Workers Agreement, found that the work belonged to them. **Due** to factors which it is not necessary to detail here, that Award is not precedent which is binding upon the Board in this case. Nevertheless Carrier urges that appropriate weight be given to the findings expressed in that case. While Carrier has not emphasized the point, the referee sitting with the Board does note that the Award of the Second Division was dated June 28, 1973 and that the assignment of sheet metal workers to perform the work in **question** here occurred subsequent to that date, in September and October, 1973. It is a reasonable inference that Carrier's assignment was affected by the Award of the Second Division. The fact that the same work is the subject of a claim by one craft, after it had been awarded by a Division of this Board to another craft, illustrates the wisdom of the Court in insisting that all parties to such a dispute be joined, so that all may be heard and a final determination can be made. In this case notice has been given to the Railway Employees

Department, the Sheet Metal Workers International Association, and the Brotherhood of Railway, Airline and Steamship Clerks. Only the sheet metal workers took the opportunity to enter the case. Their submission takes the position that their rule 62 **provides** in clear language that the work at issue here belongs to them. They also rely on Awards, including No. 6544, which have held that their work rule describes the work to be performed by covered employees, is not general in nature, and provides that the work in question here is to be assigned to employees represented by them.

Although the Brotherhood does not agree that the question of **exclusivity, which** has been before the Board in so many **claims, should** apply here it does appear that that principle is applicable and **must** be considered in this case. The record shows that the work with which we are concerned here, has been performed by employees represented by the Brotherhood, by **BRAC**, and by the Sheet Metal Workers. Neither the language of the Agreement, nor the practice on the **property** supports the Brotherhood's claim. It 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Parker*
Executive Secretary

Dated at Chicago, Illinois, **this** 28th day of May 1976.