

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21928  
Docket Number MW-21857

George S. Roukis, Referee

PARTIES TO DISPUTE: [Brotherhood of Maintenance of Way Employes

(The Belt Railway Company of Chicago

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

(1) The Agreement was violated when the Carrier assigned or otherwise permitted Mechanical Department forces to paint the air press in the Blacksmith Shop on October 20, 1975 (System File 393-MofW)

(2) As a consequence of the aforesaid violation, B&B Painter J. Sampari shall be allowed six (6) hours' pay at his straight-time rate.

OPINION OF BOARD: While the May 18, 1956 Memorandum of Understanding delineating work jurisdiction between the B&B and Shop Forces admittedly was to serve as a guide for task assignments, the specifications and functional allocations contained therein were apparently never designed to preclude future conflict regarding their application to the Diesel Shop. By simple definition both B&B and Shop unit members were employed therein.

The crux of the matter, accordingly, centers on whether or not the Blacksmith shop was an unmistakably distinct entity albeit located in the same building as the Diesel shop. After searching review of the record the Board finds that the evidence presented does not provide compelling substantiation that there were two separate shops in the building. Claimant was under a more stringent requirement to adduce more confirmatory proofs. Having thus disposed of this question, the Board must now examine the claim that the B&B forces always painted this air press.

Since the aforesaid memorandum which is germane to this determination is silent on this specific equipment and the generic categories spelled out therein not conclusively explicit to support an unequivocal finding of exclusivity, the Board must consider the qualitative merits of the supporting arguments. The Third Division has insistently required persons claiming work exclusivity, particularly as here where there is a grey area, to demonstrate by reference to history, custom and tradition that the contested work singularly belonged to them. National Railroad Adjustment Board

awards are legion on this point. This test was not satisfactorily met in this case.

Correlatively recognizing that carrier is also faced with the reciprocal responsibility of denying claimed assertions of exclusivity, the Board finds that Carrier's argument that the Blacksmith's Shop was an integral part of the Diesel shop and hence subject to the terms and conditions of the 1956 memorandum (Supra) was sufficient denial to meet this obligation.

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

That the parties waived oral hearings;

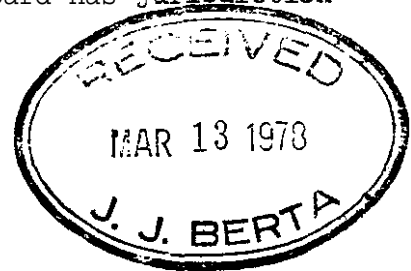
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division.

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.