

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23438
Docket Number MW-23359

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Board Of Trustees Of the Galveston Wharves

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

(1) The Carrier violated the Agreement when it assigned pile driver men (laborers) instead of recalling and assigning Mechanics W. Hart, J. Sifuentes, J. Pannell and V. Lawrence to build pallets between October 25, 1977 and December 2, 1977 (System Files 700-4, 700-12, 700-52 and 700-53).

(2) Because of the aforesaid violation, furloughed Mechanics W. Hart, J. Sifuentes, J. Pannell and V. Lawrence each be allowed pay at their respective rates for an equal proportionate share of the total number of men-hours expended by pile driver men in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: Claimants W. Hart, J. Sifuentes, J. Pannell and V. Lawrence are mechanics in the Construction and Maintenance Department and as such, have established and hold seniority there. On October 25 through December 2, 1977, Carrier appointed pile driver men, laborers from the same department, to build cargo pallets.

The Organization contends that Carrier violated the Agreement when it failed to assign Claimants who were furloughed, available and fully qualified to perform this work. The Organization states that none of the assigned men hold seniority as mechanics. Further, it claims that pallet building has customarily and historically been performed by mechanics.

Articles 3 and 4 of the Agreement read as follows:

"ARTICLE 3 - SENIORITY DATDM

Rule 1. Except as otherwise provided in this Article seniority begins at the time employee's pay starts.

Rule 2. Seniority of employees promoted to bulletined positions will date from the day of their assignment on the bulletined positions, except that when an employee so promoted fails to qualify on such bulletined position within thirty (30) calendar days, he will not acquire a seniority date as a result of filling such position.

Rule 3. The dating of an employee on the seniority roster shall determine his relative seniority status. When two or more employees have the same seniority dating in the higher classified

"position, the **numerical** position on the roster in the lower classified position will govern."

"ARTICLE 4 - CONSIDERATION

Rule 1. Right accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service with the company as hereinafter provided."

The Carrier contends there was no violation of the **Agreement**. It argues that under the provisions of Article 7, Seniority Rosters, no differentiation is made between pile drivers and **mechanics**. Carrier also cites Article 32, Rule 5 to support this position. Article 7 reads:

"ARTICLE 7 - SENIORITY ROSTERS

Rule 1. Seniority rosters of **employees** of each subdepartment will be separately compiled. Copies will be furnished foremen **and employees'** representatives. **Same** will be posted **at** Material Yard bulletin board.

Rule 2. Seniority rosters will **show** the **name, classification,** date of entry **and** seniority of the employees in the order of their seniority."

Article 32, Rule 5 states:

"ARTICLE 32 - CLASSIFICATION OF WORK

Rule 5. **Employees** assigned to lettering, stenciling, **graining,** varnishing, operation of power **machines** of any and **all** types shall be classed as shop mechanics and/or carpenters."

A central element of this dispute is whether this work belongs to a certain classification of **employees**. In order for the **Organization** to prevail, it must meet its burden of showing that the building of cargo pallets has traditionally belonged to mechanics to the exclusion of others. See Award 20071.

The evidence presented by the Carrier clearly **demonstrates** that the work involved here has **not** been exclusively performed by mechanics. As such, we are persuaded **that** mechanics have not **customarily** and historically performed the disputed work.

The **Employees** have also failed to establish, through sufficient evidence, that **a** distinct differential exists, **under** the terms of the **Agreement** between **mechanics and** pile drivers. In fact, Rule 5 of Article 32 specifically provides the definition of mechanics (or carpenters). Since the rule obviously covers

the pile drivers when performing the **work** in question, they must be viewed as being shop mechanics and/or carpenters. This is the clear import of Rule **5**.

Given the absence of proof in the record that the work falls to the mechanic or carpenter class, we must find that the Agreement was not violated. Accordingly, **we** will deny the claim in its entirety.

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. Paulsen*
Executive **Secretary**

Dated at Chicago, Illinois, this **3rd** day of November 1981.