

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23580  
Docket Number MW-23891

John B. LaRocco, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way **Employes**  
{ Pittsburgh and **Shawmut** Railroad **Company**

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

(1) **The Agreement** was violated when the Carrier used Assistant Chief Engineer-Bridges Vasbinder to inspect cleaning and painting work performed on the Sprankle Viaduct by outside forces August 1 through August 31, both dates **inclusive**, instead of using Carpenter **W. L. Himes** for such service, etc.  
(M/W file 4342)

(2) Carpenter **W. L. Himes** be ● llcwed one hundred eighty-four (184) hours of pay at his straight time rate (\$8.55 per hour) because of the violation described above."

OPINION OF BOARD: The Organization brings this claim on behalf of **Claimant**, a Carpenter in the Bridge and Building Department, who was allegedly deprived **of work** exclusively reserved to Maintenance of way **Employes** under the Scope Clause of the applicable agreement. On June 21, 1979, the Carrier notified the Organization that it intended to assign the Assistant Chief Engineer-Bridges (a supervisory official not covered by the labor agreement) to inspect painting work performed by an outside contractor on the Sprankle viaduct. The **Organization**, on July 5, 1979, urged the Carrier to assign a carpenter to **assist** the Bridge Engineer. The Carrier rejected the Organization's request. Between August 1, 1979 and August 31, 1979, the Assistant Engineer inspected the painting work on the Sprankle span. On September 24, 1979, the Organization **timely** presented this claim for one hundred eighty-four hours of pay at the straight time rate.

The Organiation argues that the inspection of paint on the Carrier's viaducts has been **exclusively**, customarily, historically, and traditionally performed by **employes** in the Bridge and Building Department covered by the applicable agreement. On the property, the Organization presented four letters demonstrating that, in the past, covered **employes** have performed the disputed work. The **Organization** also contends that the Carrier **impliedly** admitted the inspection work was subject to the Scope Rule when it gave the Organization advance notice in accord with Rule 54.

The Carrier, on the other hand, **asserts** that the disputed work was not within the province of the Scope Rule. According to the Carrier, the Assistant Engineer and not the Claimant had the special knowledge and expertise **necessary** to competently inspect the paint work performed on the viaduct.

The **Carrier's** notice dated **June** 21, 1979, which was tendered in compliance with Rule 54, does not constitute recognition by the Carrier that

the disputed work is exclusively reserved to **employees** covered by the contract. Third **Division** Award No. 21470 (Bailer). The Organization retains the burden of establishing that Maintenance of Way **Employees** have historically, customarily, and traditionally performed the inspection work on a **systemwide** basis. Third **Division** Award No. 21287 (Eischen). In this case, the Organization produced **written** statements showing that **Claimant** and other **employees** covered by the Scope Rule have, in the past, **performed** paint inspections on the Carrier's viaducts. The Carrier did not refute the veracity of these statements on the property. **Though** the Carrier did take exception to the statements in its rebuttal **submission** to this Board, a long line of Third Division cases precludes us from considering the Carrier's belated objections. The record merely contains the Carrier's bare assertions that this particular inspection work required unique expertise. Thus, the Carrier failed to **come** forward with probative evidence rebutting the Organization's substantiation that the disputed work was covered by the Scope Clause. Therefore, **we** must sustain the **claim**.

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 violated.

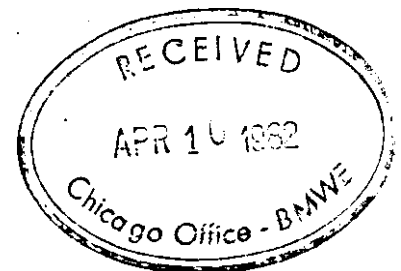
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of **Third Division**

**ATTEST:** Acting **Executive Secretary**  
National **Railroad** Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant



Dated at Chicago, Illinois, this 10th day of March 1982.