

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23895
Docket Number MW-23343

George E. Larney, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Elgin, Joliet and Eastern Railway Company

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

(1) The Carrier violated the Agreement when it assigned Car Department employees ~~instead~~ of Bridge and Building Department employees to cut up scrap Cranes Nos. ~~434~~ and 501 with a ~~cutting~~ torch at the Steel Car Shop on January 16, 17 and 18, 1978 (System File SC-9-78/SM-3-78).

(2) B&B Carpenter Foreman D. J. Bellus, Welders S. Neri and T. Hazlerig and Carpenter R. Lass each be allowed twenty-four (24) hours of pay at their respective rates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The record evidence reflects that beginning September 20, 1966, Carrier launched a program to replace a total of twenty (20) overhead cranes, fifteen (15) of which were situated in the Steel Car Shop and the remaining five (5) of which were situated in the locomotive shop. The cranes which were scheduled to be replaced were originally installed at the time the car shop and locomotive buildings were constructed.

This instant claim involves disputed work associated with the replacement of two (2) cranes (Cranes ~~#434~~ and 501) in Carrier's Steel Car Shops. The two (2) new fifteen (15) ton capacity replacement cranes were installed in the period July 12, 1977 through July 15, 1977. The old cranes, Cranes ~~#434~~ and 501, were dismantled on January 13, 1978. The work of dismantling the old cranes involved disassembling and lowering them from the moorings on the building's ceiling to the floor of the car shop. This phase of the work was assigned by Carrier to its Bridge and Building (B&B) forces. The second phase of the work, that which involved salvaging parts and cutting up the cranes for scrap however, was assigned by Carrier to Carmen Burners, a classification within its maintenance of equipment forces. The work of cutting up the cranes involved burning them into small pieces. This second phase of the work took three (3) days to complete, having been performed on January 16 through 18, 1978. According to evidence furnished by Carrier, four (4) Carmen were assigned to salvage parts and burn the cranes in question and it took them a total of sixty-four (64) hours to complete the job. This evidence further reflects that of these 64 hours, sixteen (16) were spent in removing reclaimed parts. In addition, none of the 64 hours were assigned as overtime work.

The Organization submits that the disputed work belongs to employees of its craft based on its Scope of Work Rule, namely Rules 2 and 3 of the controlling Agreement, as revised and reissued August 24, 1972, as well as past practice. In pertinent part, Rules 2 and 3 read as follows:

Rule 2 - Bridge and Building Sub-Department

"(a) All work of construction, maintenance, repair or dismantling of buildings, bridges, including **tie** renewals on open deck bridges, tunnels, wharves, docks, coal chutes, **smoke** stacks and other structures built of brick, tile, concrete, stone, wood or steel, cinder pit cranes, turntables and platforms, highway crossings and walks, but not the dismantling and replacing of highway crossings and walks in connection with resurfacing of tracks, signs and similar structures, as well as all appurtenances thereto, loading, unloading and handling all kinds of bridge and building material, shall be bridge and building work.

***"

Rule 3 - Track Sub-Department

"(d) An employee competent in and assigned to the operation of any welding device shall constitute a welder. Welders' work shall consist of all welding in connection with work in the Maintenance of Way Department covered by this agreement together with such work as repairing and tempering with a welding device rails, frogs and switches except that welding work in the Maintenance of Way Department covered by this agreement other than that in connection with the track structure proper may, if not exceeding one (1) hour of continuous welding or not exceeding two (2) hours of intermittent welding for one welder in any one day, be assigned to other employees covered in the scope rule of this agreement. The cutting of metal with an oxyacetylene cutting torch in connection with work in the Maintenance of Way Department covered by this agreement will also be assigned to employees of Group 3, Track sub-department, except that up to one (1) hour of continuous cutting or not exceeding two (2) hours of intermittent cutting for one employee in any one day may be assigned to other employees covered in the scope rule of this agreement."

The Organization submits that Rules 2 and 3 quoted above expressly restrict and allocate work in connection with dismantling of buildings and all appurtenances thereto, to Bridge and Building Sub-department forces and all welding work in the Maintenance of Way Department to Track Department welders. The Organization argues that since the car shop building was specifically designed and constructed with additional support structures to house the overhead cranes, such cranes and their supporting structures are most certainly an appurtenance thereto. The Organization further argues that Carrier clearly recognized such work contractually belonged to employees of its craft as it asserts undisputed fact **reflects** Carrier assigned B&B forces to **dismantle** and remove thirteen (13) such overhead cranes over the period of approximately twelve (12) years. The Organization maintains that under the

language of Rule 3(d), the work of cutting, which here was performed by Carmen Burners, is expressly reserved to ~~Track~~ Department welders within the Maintenance of Way Department. Thus, the Organization asserts, in assigning the disputed work to Car Department employes, the Carrier violated Rules 2 and 3 of the controlling Agreement as well as having deprived the Claimants herein of a work opportunity and entitlement to related monetary benefits.

The Carrier defends its assignment of work on the grounds that the subject overhead cranes ~~are~~ not an appurtenance thereto of the car shop building but rather a tool of the Carmen's trade. ~~The~~ Carrier asserts that prior to the removal of Cranes ~~#434~~ and 501, eleven (11) other cranes had previously been dismantled and burned and in each instance, Carmen Burners were used to perform the identical work herein claimed by the ~~Organization as~~ belonging to employes of its craft. Carrier argues the Organization in bringing this claim before the Board is attempting to ~~commingle~~ the work of removal and dismantling of the subject cranes with the burning of those cranes for scrap.

The Carrier contends its assignment of the disputed work to Carmen Burners is proper under the Carmen's classification of work, Rule 47(a) of the controlling Agreement which reads as follows:

"(a) Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; Carmen's work in building and repairing motor cars, lever cars, hand-cars and station trucks, building, repairing and removing and applying locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards, tender frames, and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears ~~doibn~~ shaping and forming; work done with hand forges and heating torches in connection with Carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing in vats); all other work generally recognized as painters' work under the supervision of the Locomotive and Car Departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliances and train car repairs, oxyacetylene, ~~thermit~~, and electric welding or work generally recognized as Carmen's work; and all other work generally recognized as Carmen's work."

In addition, Carrier notes each Claimant held a regularly assigned position on the claim dates in question and thus argues they accrued no loss

of work opportunity or wages thereof since the disputed work was **performed** during regular shift hours. In any event, Carrier submits the Organization has merely proffered assertions, contentions and assumptions **in** arguing its case but has failed to tender any probative evidence in support of its position.

In our review of the entire record, we find the preponderance of evidence supports the following findings:

- (1) That the overhead cranes in question are not part of the car shop's superstructure, but rather they are tools and equipment used by employees of various shop craft organizations assigned to work **in** the car shop facility;
- (2) That the disputed work of burning, otherwise known as cutting, the overhead cranes cannot be considered as being part and parcel of the **work** of dismantling the overhead cranes in question;
- (3) That the disputed work of burning the overhead cranes in question for purposes of salvaging and scrapping is not by contract exclusively reserved to Track Sub-department welders;

and

- (4) That there exists no probative evidence to support the Organization's assertion that over the previous twelve (**12**) years , employees of its craft only have performed the disputed work of burning the other overhead cranes which have been replaced.

Based on the foregoing findings, we rule to deny the instant 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 not violated.

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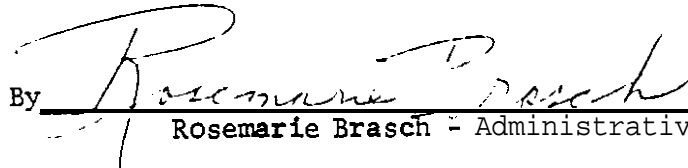
Page 5

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Claim denied.

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 26th day of May 1962.