

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24028
Docket Number MW-23932

T. Page Sharp, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Seaboard Coast Line Railroad Company

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

(1) The Carrier violated the Agreement **when** it assigned **Mechanical** Department employes to paint the interior of the General Shop Foreman's office building at **Lakeland**, Florida on January **12, 13** and **14, 1979** (System File C-4(36)-Tampa Div.-2/12-2(79-46) J3).

(2) Because of the aforesaid violation, Carpenters L. Deal and D. L. Sullivan and Carpenter Helper B. J. **Moore** each be allowed pay at their respective time and one-half rates for an equal proportionate share of the total **number** of mm-hours expended by Mechanical Department employes."

OPINION OF BOARD: Carrier had **Mechanical Department** employes paint the interior of the **General** Shop Foreman's office at **Lakeland** Yard in **Lakeland**, Florida. Claims were presented by the Brotherhood **on** behalf of the B&B Subdepartment employes holding an assignment on a Division of Carrier which included the **Lakeland** Yard. It is not denied that these employes were able to do the **painting**.

The initial correspondence stated the facts and recited Rules 1, 2, 3, 4, and 5 from the Agreement between the Brotherhood and the Carrier. The type of work **claimed** to have been historically and traditionally done by B&B employes.

The Carrier responded to the claim letter with a letter of declination which stated that the **work** of employes represented by the **two** crafts (**carmen** and maintenance of way) is often overlapping **and** that the practice has resulted **in** no clear lines of demarcation. Four examples of similar work being done at different times are alleged. The Carrier in this **correspondence**, alleges that on **two** occasions **Mechanical** Department employes had painted the **interior** of this **same** building. Statements from two Mechanical Department employes who had painted the building, one **in 1973**, the other **in 1968**, were **appendaged** to the correspondence.

Rules 1, 2, 3, 4, and 5 read:

'RULE 1
SCOPE

These Rules cover the hours of sex-vice, wages and working conditions for all employees of the **Maintenance**

of Way and **Strucures** Department as listed by Sub-departments in Rule **5-Seniority** Groups and Ranks, and other employees who may subsequently be employed in said Department, represented by Brotherhood of Maintenance of Way **Employees.**

This Agreement shall not apply to: Supervisory forces above the rank of foreman, clerical employees and Signal and **Communication** Department employees."

Rule '2 reads in pertinent part:

'RULE 2
CONTRACTING

This Agreement requires that all maintenance work in Maintenance of Way and Structures Department is to be performed by employees subject to this Agreement except it is recognized that, in specific instances, certain work that is to be performed requires special skills not possessed by the employees and the use of special equipment not **owned** by or available **to the** Carrier. **In** such instances, the Assistant Vice-Resident Engineering and Maintenance of Way, and the General Chairman will **confer** and reach an understanding setting forth the conditions under which the work will be performed."

"RULE 3
SUBDEPARTMENTS

The employees covered by this Agreement shall be grouped in subdepartments as follows:

- (a) Track Subdepartment
- (b) Bridge and Building Subdepartment
- (c) Water Service, Fuel and Air **Conditioning**
Subdepartment
- (d) Welding **Subdepartment**
- (e) Maintenance of Way - **General"**

'RULE 4
SENIORITY DISTRICTS

Seniority districts as referred to in Rule **5** shall be as **follows:**

District Seniority

- 1. Rocky **Mount** and Raleigh Divisions
- 2. Florence and Savannah Divisions

3. Atlanta and Waycross Divisions
4. Jacksonville and Tampa Divisions (Miami Division if and when established)

System Seniority

1. system"

"RULE 5
SENIORITY GROUPS AND RANKS

Section 1

The seniority rights of employees shall be confined to seniority districts as set forth in Rule 4 and to subdepartments and groups as shown below. The rank sequence of employees within the various groups shall be as shown below, the lowest number designating the highest rank and the highest number the lowest rank in the group.

Bridge and Building Subdepartment	Seniority Districts
Group A	
Rank 1 - Carpenter Foremen)
Rank 2 - Carpenter)
Rank 3 - Carpenter Helpers) District
Rank 4 - Laborers (when gang exceeds 10 men)	

The groups listed in Section 1 of this Rule 5 shall include the following, as well as any other positions or classes that should properly be included or that may be added in the future.

Bridge and Building Subdepartment

Group A: Carpenter Gangs, including Wharf Gangs and Fence Gangs.
Group B: Building Department Paint Gangs.
Group C: Bridge Gangs.

Group D: Metal Bridge Gangs and Met81 Bridge Paint
Gangs (including their Welders ~~and~~ Welder
Helpers)
Group E: Concrete Gangs
Group F: Scale Gangs
Group G: Building Department Electrical Workers
(except those in the Water Service, Fuel &
Air Conditioning Subdepartment)
Group H: Plumbing Workers."

Rule 1 is the Scope rule. It is a generalized rule which does not outline any rights to specific work. Such general scope rules do not give any craft an exclusive right to specific work. If such a right is to be established it must be proved that the work has been exclusively performed by the claiming craft on a **systemwide** basis. See Award 10585, 8831, **12972, 20232** and many others. In this instant case the Carrier not only alleged examples of intermingled work on the system, but also furnished evidence that the painting has been performed by different crafts on the very building in question. **The Claimant** has not established his claim under Rule 1.

Rule 2 is entitled contracting. **Claimant** cited an award that held that **contracting** out painting work at the **Kissimmee**, Florida was violative of Rule 2 of the Agreement. Claimant states that this award is conclusive on this case.

Rule 2 determines work priority between the Maintenance of Way and Structures **employes** and **employees** of outside contractors, that is **employes** of other than Carrier. A contracting rule is not held to determine priority of work between **employes** of the Carrier. If a **jurisdictional** dispute is to be settled, the solution must be found in some other rule.

Rules **3,4,** and **5** concern seniority rights with subdepartments established under the Agreement. Nowhere in these rules is there any listing of work to be **done** by the **employes** classified under the rules. As such these rules are not pertinent to this claim.

Claimant has not established that painting yard building interiors has been the exclusive work of the B&B Subdepartment. Nothing has been said that would negate the evidence of the Carrier that this building has been painted in the past by Mechanical Department forces. Therefore, Claimant has not **met** the burden of proof necessary to establish its right to **the** work in question.

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.

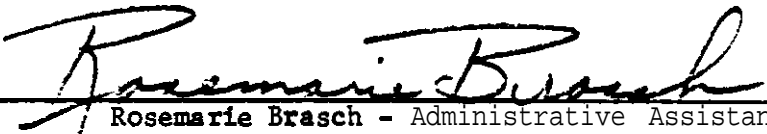
A W A R D

Claim denied.

NATIONALRAILROAD 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 15th day of November 1982.