

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24033  
Docket Number MW-24008

T. Page Sharp, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Denver and Rio Grade Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned outside forces to replace doors at the Steel Car Shop and Rack Shop on November 16, 19, 20, 21, 27, 28, 30, December 4, 5, and 6, 1979 and January 3 and 4, 1980 (System File D-1-80/MW-18-80).

(2) Because of the aforesaid violation, R&B Mechanics R. B. Naysmith and P. Gates each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by outside forces."

OPINION OF BOARD: The Carrier contracted out the replacement of doors at its Steel Car Shop and Backshop. The Carrier, before it contracted out the work, had notified the Organization of its intent to do so. After the work had been performed the Organization submitted claims for one hundred and ninety two man hours.

The claim of the Organization is that the Scope Rule of the Agreement gives employees the right to the work. A letter by its General Chairman to the Carrier stated that this type of work had been performed by E&B forces not only on this type of building but all others as well. The Organization claims that the statement made in the letter has not been denied and, therefore, must be taken as evidence of its right to the work.

The Scope Rule, the Classes Rule, the Classification Rule and the Seniority Rule have been interpreted several times on this property. The awards have held that the Rules describe no work accruing to the Maintenance of Way forces and must be considered generalized. Third Division Awards 11118, 14877 and 15221. If the employees have a right to the work in question the Board must find that such work has historically and traditionally belonged to the complaining craft.

The Organization contends that the giving of notice of an intent to contract out the work substantiates the claim that the work is covered under the Scope of the Agreement. Recent awards have rejected this argument and this Board agrees with those awards. See Third Division Awards 21470, 21267 and 20920.

The Petitioner must carry the initial burden of proof by presenting evidence that the replacement of doors has historically and traditionally been done by the employees it represents. The evidence presented is contained in a letter from a Local Chairman to the General Chairman which states in pertinent part:

"All door replacements in the past have been installed by B&B forces. We have replaced doors at the Diesel House, Steel Car Shop and Backshop at various times."

The letter was included in an appeal from the decision of Carrier's superintendent who had denied the claim. The letter was referenced with the statement of the General Chairman that:

"Attached hereto please find copy of letter from B&B Foreman L. L. Richie who is also Local Chairman for the B&B Department employees...Mr. Richie has been foreman of the B&B gang since December 14, 1946."

The Carrier denied the appeal of the claim on May 23, 1980 and in so doing the Director of Personnel stated:

"The installation of new steel doors is not and never has been exclusively the work of the B&B mechanics. Cut-side contractors have installed such doors for years on this property."

No further proof was offered by either party. The evidence presented to the Board consists of a statement of a union official and a statement of a company official which statements are diametrically opposed. Based upon this evidence the Board cannot substitute its judgement for the judgement of the Carrier. The initial burden of proof has not been substantiated, therefore the claim must be denied.

**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.

Award Number 24033  
Docket Number MW-24008

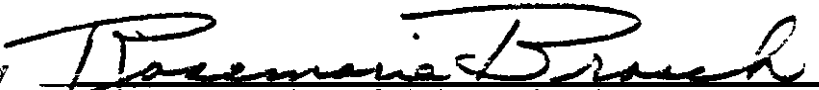
Page 3

A W A R D

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 15th day of November 1982.