NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24497
THIRD DIVISION Docket Number MW-24567

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Consolidated Rail Corporation
(former Erie Lackawanna Railway Company)

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

(1) The Carrier violated the Agreement when it assigned Group 1 employes (one foreman and five trackmen) instead of Group 2 employes (carpenters) to install a preformed rubber highway crossing at Castle, New York July 7 through August 8, 1980, both dates inclusive.

(2) Because of the aforesaid violation, furloughed Carpenters G. Ambrosoli and F. DeRush each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours expended by Group 1 employes in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: On October 2, 1980 Division Engineer B. L. Fine received two identical letters, each signed by Claimants G. Ambrosoli and F. DeRush, in which alleged violation of current Agreement was claimed. Claimants specifically alleged that work which should have been performed by them as Group 2 carpenters was performed by Group 1 employes. The work in dispute consisted. of tte installation of a rubber highway crossing at Castile, New York on July 7 and 8, 1980. Although the instant dispute was handled as two separate cases on property they will be handled as one before the Board since they are identical in all details except for the names snd seniority dates of the Claimants.

The central issue of the instant case centers on whether the Carrier violated that sub-section of Rule 44 of the current Agreement which addresses the work of carpenters. The case at bar goes considerably beyond the issue of Scope, covered by Rule 1 of the current Agreement, to the specific description of carpenters' duties which consist, in pertinent part, according to Rule 44 in "... constructing, maintaining, repairing and dismantling . . . preformed highway crossings . . .". It is Claimants' contention that Carrier violated the above quoted subsection of Rule 44 when it assigned only 1 carpenter, plus 1 foreman and 5 trackmen to install a preformed rubber crossing at Castile, New York on July 7 and 8, 1980 in lieu of 3 carpenters. At the time and locale in question it is the contention of the Claimants that the foreman and trackmen performed work which should have been performed by carpenters when installing the rubber crossing. Such work consisted in positioning the rubber pads which weighed in excess of 150 pounds, drilling holes for lags, using the lag impact wrench to install the lags, etc. Carrier at no point in the record before the Board denies that the Group 1 employes were assigned to the work in question on July 7 and 8th; its rebuttal rather is based on the principle of past practice with claims that it has been standard practice to assign one carpenter to a crossing gang doing work of this type "... in lieu of bringing different carpenter gangs

in to work on (a) crossing-on a strictly as-needed basis" as Chief Regional Engineer Myers stated to Claimants in his letter of January 27, 1981.

The issue at bar in the instant case does not center, however, on past practices which this Board has held must only be resorted to when the contract language under consideration is unclear and ambiguous (Third Division Award 14204); nor is the issue one which deals only with a Scope Rule question. The language of the sub-section of Rule 44 at dispute is clear, succinct and unambiguous; there can be no uncertainty as to its meaning. Tne language is specific, not general.' The work of "... constructing . . . preformed highway crossings" is the work of carpenters and not others. "Constructing" can only be reasonably interpreted to mean the various tasks which must be performed to install such crossings; absent such interpretation this contract provision, otherwise clearly written, is without meaning. Should the Carrier find such Board interpretation contrary to past practice, a change in arrangement should be sought at the bargaining table and not before this Board whose role, mandated by the Railway Labor Act, is to interpret and not to write collective bargaining Agreements (First Division Awards 21459; 21450).

Carrier contention that a Rule such as Rule 44 was written for "pay purposes only" is rejected by the Board, as are issues raised by the Carrier in its ex parte submission as they relate to relief requested by the Claimants and procedural matters. The latter are improperly before the Board since they were not raised during the handling of this dispute on property (Third Division Awards 20178; 20541; 21463; 22054).

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 Employes involved in this dispute are respectively Carrier and Employes 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

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1983.