

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24739
Docket Number MW-24473

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The Agreement was violated when, from September 15 through September 22, 1980, Roadway Track Department employees were used to perform Bridge and Building Department work (removing drift and debris from under bridges) between Ennis and Dallas, Texas (System File MW-81-2).

(2) The Agreement was violated when, from September 10 through September 19, 1980 Roadway Track Department employees were used to perform Bridge and Building Department work (removing drift and debris from under bridges) between Corsicana and Ennis, Texas (System File MW-81-3).

(3) B&B Foreman D. W. Moore, Assistant B&B Foreman G. H. Sladeczek and Carpenters B. B. Brown, A. R. Brown, E. J. **Trantham** and K. R. **Ballard** each be allowed forty-eight (48) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof.

(4) B&B Foreman B. R. Hudson, Assistant B&B Foreman R. D. Holt and Carpenters C. H. Cobb, J. R. Brown and B. O. Calhoun each be allowed sixty-four (64) hours of pay at their respective straight time rates because of the violation referred to in Part (2) hereof."

OPINION OF BOARD: The relevant facts of this claim are not in dispute. In September 1980, Carrier found it necessary to remove drift and debris from under bridges on its territory between Corsicana and Dallas, Texas. Accordingly, from September 10 through September 19 Carrier assigned Roadway Track Department forces to clear debris from under bridges between Corsicana, Texas and Ennis, Texas. Also, from September 15 to September 22, Carrier assigned Roadway Track forces to perform similar work from under bridges between Ennis, Texas and Dallas, Texas.

The Organization maintains that the work in question should have been assigned to Bridge and Building Department Forces (**B & B**), instead of Roadway Track forces. In the Organization's view, Carrier's action here violates Articles 1, 2 and 6 of the Agreement. Those provisions read, in relevant part:

"ARTICLE 1
SCOPE

Section 1. These rules govern rates of pay, **hours** of service and working conditions of all employees in the Maintenance of Way and Structures Department (not including supervisory forces above the rank of foreman) represented by the Brotherhood of Maintenance of Way Employees as follows:

Roadway Track Department:

Foremen, Assistant Foremen, Apprentice Foremen, Laborers, Highway Crossing Watchmen and/or Flagmen, Watchmen at Non-Interlocking Crossings, and Lamp Tenders, Laborer, Driver.

Bridge and Building Department

Foremen, Assistant Foremen, Mechanics, Carpenters, Painters, Bridge Watchmen, Helpers, Laborers and Pumpers."

ARTICLE 2

Section 1.(a) Except as otherwise provided, seniority begins at the time the employee's pay starts on the position to which assigned following bulletining of the vacancy.

Employees temporarily employed or promoted to a position of higher rank than laborer, shall not establish a seniority date unless assigned thereto following bulletining of vacancy as provided in Article 8.

(c) Rights accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service as hereinafter provided."

ARTICLE 6

Section 1. Seniority rosters of employees of each subdepartment by seniority districts will be separately compiled Seniority roster will show the name of each employee and his seniority date by classes."

The Organization points out that B & B forces and Roadway Track forces are in separate seniority groups under its Agreement with Carrier. In the Organization's view, work which normally accrues to one sub-department may not be transferred to another, even where the rosters of the two departments are compiled under the same Agreement.

Moreover, the Organization argues that the work in question has been traditionally and customarily performed by B & B forces, rather than by Roadway Track forces. It asserts that the purpose of clearing debris and drift from under bridges is to maintain them in safe condition. Since the purpose of the work relates to bridge maintenance, the Organization concludes that such work should be performed by B & B forces, rather than Roadway Track forces.

For these reasons, then, the Organization asks that the claim be sustained. It seeks forty-eight hours pay at straight time rates for B & B Foreman D. W. Moore, Assistant B & B Foreman G. H. Sladeczek and Carpenters B. B. Brown, A. R. Brown, E. J. **Trantham** and K. R. Ballard, and sixty-four hours pay at straight time for B & B Foreman B. R. Hudson, Assistant B & B Foreman R. D. Holt and Carpenters C. H. Cobb, J. R. Brown and B. O. Calhoun.

Carrier, on the other hand, denies that it violated the Agreement here. It asserts that the Scope Rule of the Agreement is general in nature. That is, it merely lists the positions covered by the Agreement; it does not describe the work to be done by either B & B or Roadway Track forces.

Thus, Carrier insists that for the Organization to prevail here it must show that the work in question was performed exclusively by B & B forces. This it has not done. Accordingly, Carrier asks that the claim be **dismissed**.

After reviewing the record evidence, we are convinced that the claim must fail. This is so for a number of reasons. First, we concur with Carrier that the Scope Rule under the Agreement is general in nature. As such, the Organization bears the burden of proving that work at issue has been customarily and traditionally performed by **employees** covered under the Agreement. This principle has been well established by Awards of this and other Boards (see for example, Second Division Awards Nos. 5525 and 7378).

Second, we believe that this "exclusivity" principle should be applied to subdepartments within the same Agreement. Numerous awards indicate that seniority rosters, and the classes they represent, within a single Agreement should be treated in the same manner as bargaining units under separate agreements (e.g. Second Division, Award No. 5413).

Here, the Organization has failed to prove that the work in question was traditionally and customarily performed by B & B forces. Instead, Carrier and the Organization have raised oompeting arguments as to who has traditionally removed drift and debris from under bridges on its territory. The Organization's evidence is insufficient to meet its burden.

Finally, we note that Awards cited by the Organization are not applicable to the facts of this dispute. For example, this Board's Award No. 4077 concerned a Classification Rule which specifically defined the work of a bridge and building carpenter and/or mechanic as "constructing, repairing, maintaining or dismantling bridges, buildings or other structures,..." Thus, exclusivity of work was not required to be proven in that case. Here, however, no such description of job functions exists. Accordingly, the Organization is required to prove that the work in question was performed exclusively by B & B forces. As noted above, it has failed to meet that burden. Therefore, the claim must fail.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: _____

Nancy J. Dever
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois. this 30th day of March, 1984.

