

NATIONAL **RAILROAD** ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25523
Docket Number MW-25699

James Robert Cox, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(National **Railroad** Passenger Corporation (Amtrak)

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

(1) The Carrier violated ~~the~~ Agreement when it assigned a Boiler Shop employe to fabricate and install metal steps at a new office in the "**Power House**" at **Wilmington**, Delaware March 1 **thru** March 5, 1982, both dates inclusive (System Docket NEC-BMWE-SD-428).

(2) As a consequence of the aforesaid violation, B&B Welder **J. P. Coursey** shall be allowed forty (40) hours of pay at his straight time rate.

OPINION OF BOARD: The Organization claims that the Carrier violated the Agreement when it assigned a Boiler Shop employe rather than B&B Welder, **J. B. Coursey**, to fabricate and install metal steps to a new office inside the **Burlington-Delaware** Power House. The Office itself had been constructed by B&B forces. **They** seek 40 hours straight time pay for Claimant.

The Organization contends that work of this type had ~~been~~ customarily performed by Bridge and Building forces of their unit. The Carrier asserts that such work has always been performed on the property by **employees** from the Boilermakers unit.

The Organization cites Work Classification Rule, Article I, Section 17 which describes the duties of the Welder as "welding maintenance of way materials and equipment by use of oxyacetylene or electric arc method where facilities for such welding are provided by the maintenance of way department, exclusive of welding performed by plumbers, pipefitters and tinsmiths in connection with their own **work.**" No exception in the Rule is provided for Boiler Shop Welders who hold no seniority within the Bridge and Building subdepartment.

The Carrier states that there is no provision in the Agreement for the assignment of metal steps installation exclusively to B&B Welders. The Organization argues that since the work is generally recognized as welding work, there is no obligation on their part to prove exclusivity.

Under applicable Board rules, the Boilermakers were notified of the pending dispute. The Boilermakers submitted an Intervening Statement. That **Statement** asserts that the disputed work belongs to them.

The Scope Rule of the Brotherhood of Maintenance of Way Employees' Agreement includes work such as "**construction...of** buildings and other structures...". This Rule also includes a requirement that "nothing in this Agreement shall **be** construed to require the transfer of work now being performed by employees not covered by this agreement to employees covered by this agreement".

When, as a matter of practice, layout, fabrication and installation of similar metal work has been assigned to Boilermakers **on** the property in question, Maintenance of Way cannot now claim that such work for Bridge and Building forces (Welders) under the **Scope** Rule, a Rule which, by its own terms, recognizes that its enumeration of duties does not require exclusive assignment of those duties. Several Awards recognized exceptions which discredit the Organization's exclusivity *claim*. Third Division Awards 19268, 18471.

There is insufficient evidence that the sought work is exclusively Welder work based on practice. Finally, there is no evidence in the record showing that the sought work involved levels of skill and tools possessed by B&B Welders.

For these reasons the claim is denied.

FINDINGS: The Third Division of **the** Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and **upon** the whole record and all the evidence, finds and holds:

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, **this** 28th day of June 1985.