

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25813

Docket Number MW-25409

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis Southwestern Railway Company

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

"(1) The Carrier violated the Agreement when it assigned Mechanical Department employees instead of Bridge and Building Department employees to construct an Air Compressor Service Building (8' x 20') at Herington, Kansas beginning April 2, 1982 (System File SSW-0-468).

(2) Because of the aforesaid violation, B&B Foreman B. Doerksen and B&B Carpenters J. D. Reeve and D. L. Idleman shall each be allowed pay at their respective rates for an equal proportionate share of the two hundred sixty-four (264) man-hours expended by Mechanical Department employees in performing the work referred to in Part (1) hereof." (MW-5020)

OPINION OF BOARD: In April 1982, the Carrier assigned Mechanical Department Employees to form and pour an 8' x 20' concrete slab on which employees from the same Department constructed and erected a new Air Compressor Service Building. Subsequently, it was painted, also, utilizing the services of one employee of the Mechanical Department.

The Organization asserts that the work performed by the Mechanical Department employees has historically and traditionally been performed by the Carrier's Bridge and Building employees. It relies upon its Scope Rule, numerous awards, and a letter from the local General Chairman, Brotherhood Railway Carmen of the United States and Canada which, in pertinent part, stated that: "The Carmen do not claim this work as a part of our scope rule."

The Carrier, although it denied the Claim at the various stages progressed on the property, provided little rationale for its denials except for one letter in which it stated that: "during that conference you were advised that historically the various crafts covered by the shop craft agreement had performed work within the confines of the Mechanical Department Facility and that this work would not normally accrue to members of the crafts represented by the BMW." At the time of the conference cited above the Carrier also submitted copies of Third Division Awards to support its denial of the Claim herein.

The Board has thoroughly reviewed the submissions of the parties and has considered the contentions progressed to it. At the outset, we note that the Carrier has submitted a number of past Claims which it contends are similar to the one under dispute here and which the Organization has abandoned.

It essentially asserts that since the Organization abandoned these Claims, this abandonment constitutes an acknowledgment by the Organization that the current Claim has no merit. These matters were not raised on the property and the Board does not have available to it the facts and circumstances and/or the reasons for the abandonment of the Claims. Under these circumstances, we cannot accept the Carrier's inference and we may not properly consider the abandoned past Claims for purposes of our deliberations.

With respect to the merits of the Claim, we find that the weight of the record supports the contentions of the Organization. On a number of occasions, as it progressed this Claim, the Organization described the work that it claimed in great detail, the Rule upon which it relied, and a statement from the BRC of US&C disclaiming the work. Therefore, while we do not retreat from the well-established principle that the burden of proof in claims such as this rests with the moving party, the burden, in this instance, shifted to a significant degree to the Carrier to substantively refute the Claim that the work described and asserted by the Organization fell under its Scope Rule. The Carrier has failed in this respect. We find that the work claimed, under the circumstances and facts properly before us, accrues to the Claimants.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois this 12th day of December 1985.