

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25818
Docket Number MW-25493

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Chesapeake and Ohio Railroad Company (Southern Region)

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

(1) The Carrier violated the Agreement when it assigned a Car Department employe instead of Bridge and Structure forces to construct and install pit covers (Pits Nos. 16, 19 and 20) at the Huntington Shops on August 19, 20, 24 and 25, 1982 [System File C-TC-1426/MG-3672].

(2) Because of the aforesaid violation, Bridge and Building Mechanics D. L. Farnsworth, S. Byrd, W. Smith, H. Clay, I. Wiley, C. Hanshaw and C. R. Stratton shall be allowed an equal proportionate share of the thirty-two (32) man-hours expended by the Car Department employe in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: This dispute involves a Claim on behalf of B & B Mechanics who contend that the Carrier's use of a Carman to construct and install wooden pit covers on three Service Pits was in violation of Rule 66 - Classification. The Organization contends that work of the character involved here has customarily, historically and traditionally been performed by its forces and is reserved to them under the provisions of the aforementioned Rule.

The Brotherhood Railway Carmen of the United States and Canada were notified of this Claim as parties of possible interest and have provided a submission in response thereto for the Board's consideration.

The Board, in its many rulings on issues such as this, has established that the burden of proving the essential elements rests with the moving body.

The evidence shows that the members of the Claimant's Organization have at times performed the work claimed. However, the Board is also convinced on the basis of the evidence of record that the Carmen, a third party of interest here, also have performed such work as is in dispute here.

The Board concludes that the pit covers were fabricated and then placed over the pit openings. The Organization's reliance upon its Scope Rule is not unreasonable, since the record indicates that it has done such work in the past. However, there is other evidence to show that this type of work also has been done by the Carmen. Accordingly, exclusivity has not been shown and, under the circumstances, we cannot sustain the Claim.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

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