

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25821

Docket Number MW-25503

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Chesapeake & Ohio Railway Company (Southern Region))

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

(1) The Carrier violated the Agreement when it assigned Car Department forces instead of Bridge and Structures forces to dismantle tool houses in the vicinity of the Peach Creek Car Shop September 7 through September 11, 1982 (System File C-TC-1441/MG-3678).

(2) As a consequence of the aforesaid violation B&B Mechanics L. Spry, Jr., M. Dial, C. D. Lambert, C. Conley, A. Adkins and C. Rakes shall each be allowed pay at their respective rates for an equal proportionate share of the three hundred forty-four (344) man-hours (248 hours straight time and 96 hours overtime) expended by Car Department forces in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: In this dispute, the Organization contends that the Carrier assigned and used Car Department employees to tear down tool houses. It asserts that work of this character has customarily, historically and traditionally been performed by the Carrier's Bridge and Structures Forces and is reserved to them under the provisions of Rule 66 - Classification.

The Carrier avers that it used one Carman to cut down a metal building constructed of car siding material. Also, one Carman used a forklift truck to remove an old floorless wooden shed, and two Carmen were used to remove the remains of an outdoor toilet. It submits that the work was necessary because the facilities were in such deplorable condition that, in the case of two of the structures, these conditions presented a safety hazard. Thus, it contends that Carmen retain the right within their shop limits to maintain their facilities, particularly in the interest of shop safety.

The Brotherhood Railway Carmen of the United States and Canada were notified of this Claim as possible parties of interest, but that Organization determined not to intervene.

The character of the work, as initially described by the Carrier when it denied the Claim under dispute, essentially consisted of the dismantling and removal of three structures in varying conditions. Under the circumstances presented in the record before us, we find that the work involved was more than the removal of debris and scrap material and that an emergency was not shown to exist which required that the work be accomplished on the specific date when the work was performed.

Turning to the hours claimed, we find this Claim to be excessive. The best evidence indicates the work was performed in ten (10) hours and twenty (20) minutes. We therefore sustain Part 2 of the Claim to the extent of ten (10) hours and twenty (20) minutes pay at the straight time rate of pay.

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

Claim sustained in accordance with the Opinion.

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.