

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25927
Docket Number MW-25661

George S. Roukis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and 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 employees instead of Bridge and Structures forces to construct a partition, eight (8) feet high and twenty (20) feet long, in the second floor locker room of the Huntington Shops (System File C-TC-1469/MG-3799).

(2) As a consequence of the aforesaid violation, B&B employees W. W. Smith, I. Wiley, H. Clay, D. L. Dean, C. Hanshaw, K. D. Brown, D. E. Scarberry and C. Stratton shall each be allowed an equal proportionate share of the sixteen (16) man-hours expended by Car Department employees in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: It is the Organization's position that on or about September 30, 1982, Carrier improperly assigned Car Department Employees to construct a partition eight (8) feet high and twenty (20) feet long in the second floor locker room of the Huntington Shops. The Organization asserts that said work which involved anchoring the partition to the floor by braces and to the ceiling with steel traps was structural work as defined and protected by Rule 66(c) and, as such, clearly reserved to Bridge and Structure Group Forces. It avers that Carrier has not demonstrated that Shop Craft forces have ever performed this type of work nor shown by detailed evidence that a contrary past practice existed. It maintains that Rule 154 of the C&O Shop Crafts' Agreement does not cite work of the character involved in this dispute, but relates to planning mill, cabinet and bench carpenter work in shops and yards.

Carrier contends that this work represented routine carpentry work that was permissibly performed by Carmen. It argues that Carmen have historically built platforms and enclosures to protect materials and equipment within their shop limits without encroaching on B&B work. It avers that Carmen duties are not singularly restricted to rolling stock, but include various carpentry duties in the shops and yards in accordance with the Carmen's Classification of Work Rule. It maintains that the structural integrity of the shop building was not disturbed when said work was performed and this pivotal distinction is the defining criterion. It further asserts that the monetary compensation requested by the Organization is tantamount to a penalty payment and unsupported by the controlling Agreement since it took the Carmen eight (8) hours rather than sixteen (16) hours to perform the work.

In our review of this case we concur with the Organization's position. From the record, it appears that the divider was more of permanent structural modification, than a temporary movable enclosure and accordingly, affected the character of the building. The divider was firmly anchored to the floor with braces and to the ceiling with steel traps, which by definition, connotes permanency. We recognize the complicated distinctions that normally arise when work of this nature is contested, but we believe that the firm attachment of the divider in this instance is a significant distinction. Carrier has argued that it was practice on the property for Carmen and other Shop Craft employes to perform various carpentry duties in accordance with their respective Work Classification Rules, but we have no concrete evidence of past practice that Carmen routinely performed work of this character. In this connection, Carrier should have submitted documentation, including statements from the Shop Crafts that non B&B forces performed this type of work. We agree with Carrier, on the other hand, that the monetary portion of the claim is excessive since the Organization has not conclusively established that the work took more than eight (8) hours and thus, we are compelled to sustain the claim for eight (8) hours time.

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 26th day of February 1986.

