

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26320
Docket Number MW-26051

Martin F. Scheinman, Referee

(Brotherhood of Maintenance of **Way Employees**

PARTIES TO DISPUTE: (

(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 and used Track Department forces instead of Bridge and Structures forces to perform roadbed stabilization work on the Athens Subdivision (System File **C-TC-1791/-MG-4082**).

(2) Because of the aforesaid violation, the members of Force 1401 shall each be allowed pay at their respective rates for an equal proportionate share of the man-hours expended by Track Department forces in performing the work referred to in Part (1) hereof beginning sixty (60) days retroactive from May 24, 1983."

OPINION OF BOARD: In early April, 1983, Carrier found it necessary to perform certain roadbed stabilization work on its Athens Subdivision. Carrier elected to have the work performed by Track Department forces instead of Bridge and Structures Forces.

As a result, the Organization filed this Claim. carrier **timely** rejected it. The dispute was handled in the usual manner on the property whereupon it was advanced to this Board for adjudication.

The Organization contends that the work in question properly belongs to Bridge and Structures Forces. It asserts that the work involved consisted of driving pile rail into the shoulder on either side of the track and welding tie back and waler rails to the poles.

In the Organization's view, these tasks have been traditionally and historically assigned to Bridge and Structures Group Forces. Therefore, it asks that its Claim be sustained in its entirety.

Carrier, on the other hand, asserts that rail pile driving work does not accrue exclusively to Bridge and Structures Group Forces. Therefore, it argues that it properly assigned this work to Track forces. Accordingly, it asks that the Claim be rejected.

After careful review of the record, we are convinced that the Claim must fail. This is so for a number of reasons.

First, the Scope Rule is general in nature.. That is, it does not specifically reserve the disputed work to members of one sub-department. As such, the Organization bears the burden of establishing that these assignments have been exclusively fulfilled, on a system-wide basis, by Bridge and Structures Forces.

The Organization has not met this burden. Carrier has demonstrated that Buildings and Structures forces often are not involved in placing sections of rail under track structures. Such is the disputed work here. Thus, the Organization has not demonstrated that Bridge and Structures Forces have exclusively performed this work.

Finally, we note Third Division Award No. 25462 wherein the Board concluded that both Building and Structure Forces and Track Department Employees shared work similar to that involved in this dispute. Nothing herein suggests that Award's rationale should not be controlling. Accordingly, we conclude that the Organization has not met its burden of proof here. Therefore and for the foregoing reasons, the Claim must fail.

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. Dover - Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1987.