

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

(1) The Carrier **violated** the Agreement when it assigned repairmen and a repairman **helper** to perform **Bridge and Building work in connection with** repairing the floor in the Canton Repair Shop on May 17, 20, 21 and 22, 1985 (System Dockets **CR-1803**, **CR-1804**, **CR-1801**, **CR-1802** and **CR-1806**).

(2) Because of the aforesaid violation, **B&B** Foreman A. Workman and **B&B** Mechanics J. Vincent, G. Rypien and R. Mann shall each be allowed **thirty-two (32)** hours of pay at their respective straight time rates and **B&B** Mechanic B. Williamson shall be allowed **twenty-four (24)** hours of pay at his straight time rate."

FINDINGS:

The Third Division of the Adjustment Board **upon the whole record** and all the evidence, finds that:

The carrier or carriers and the **employee or employees involved in this dispute are** respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of **appearance at** hearing thereon.

Over a period of four days, the Carrier assigned five Repairmen to break existing concrete **and pour new** concrete to repair the floor in the Maintenance of Way Shop Building at Canton, Ohio. The Organization argues that this work should have been assigned instead to Bridge and Building Mechanics.

As **a threshold issue**, the Carrier argues that the Claim may not be progressed to the Board because **it was** initially presented to the Shop Superintendent instead of to the Division Engineer. The Organization contends that the Claim was presented to the designated Carrier official at the proper **"location," as** referred to in Rule 26(1). The Board finds this circumstance is not of sufficient weight to defeat the Claim, especially **since the Superintendent** replied to the **Claim with no indication** that it **was** improperly addressed to him.

As to the merits of the Claim, the Organization relies primarily on the portion of the Scope Rule, which reads as follows:

"RULE 1 - SENIORITY CLASSES

The seniority classes and primary duties of each class are:

Bridge and Building Department

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B. Bridge and Building Roster:

1. B & B Foreman

Direct and work with employees assigned under his jurisdiction.

2. Assistant Foreman

Direct and work with employees assigned to him under the supervision of a Foreman.

3. B & B Mechanic

Construct, repair and maintain bridges, buildings and other structures.

4. B & B Helper

Assist B & B Mechanic

* * *

Track Department

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D. Repairman Roster (*):

1. Repairman Foreman

Direct and work with employees assigned under his jurisdiction.

2. Repairman

Repair tools, machinery and equipment.

3. Repairman Helper

Assist Repairman."

The Carrier, however, points to the fourth paragraph of the Scope Rule, which reads as follows:

"The listing of the various classifications in Rule 1 is **not intended** to require the establishment or to prevent the abolishment of positions in any classification, nor to require the **maintenance of positions** in any classification. The listing of a give" classification is not intended to assign work exclusively to that **classification**. It is understood that employees of one classification **may** perform work of another classification subject to the terms of this Agreement."

A reading of this fourth paragraph **states** that "employees of one classification" under Rule 1 "may perform work of another classification." This clearly supports the position taken here by the Carrier. The organization points out, however, that this right is limited by the phrase, "subject to the terms of this Agreement." The Organization **argues** that the separate seniority provisions for **B&B Mechanics**, as contrasted to Repairman, is sufficient to defeat the otherwise broad meaning of the fourth paragraph. The Organization also refers to Rule 3, Selection of Positions, and Rule 4, Seniority, **as** barriers to the assignment of work of employees in one classification to employees in **a** different classification.

The fourth paragraph obviously does not specify which "terms of the Agreement" act **as** a barrier. Here, Repairmen were assigned to work within the Repair Shop. It is the Carrier's contention that such work has been performed by Repairmen for many years, both before and after the introduction of the fourth paragraph of Rule 1 in its present form. The parties are in dispute whether a list of such Instances was provided to the General **Chairman** on the property during the processing of this Claim, and the Board is unable to resolve this factual dispute.

Nevertheless, **the** Board finds that the reading of Rule 1 sanctions the Carrier's action in this particular **instance**. Rule 1 refers to "primary duties," not exclusive duties, of each classification. The fourth paragraph is obviously designed to allow some leeway among classifications which might not otherwise be clearly provided. The outline of "primary duties" of the various classifications is not sufficient to defeat this. If the limited work performed here by the Repairmen, there is no showing that "positions" of other classifications were improperly filled.

Based on the circumstances **herein**, the Board finds no **violation** of the Agreement.

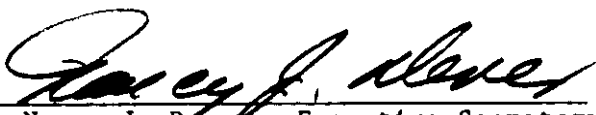
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Award No. 26761
Docket No. ~~MW~~-27209
88-3-86-3-283

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 15th day of January 1988.