

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27571
Docket No. MW-26704
88-3-85-3-456

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Duluth Missabe and Iron Range Railway Company

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

(1) The Carrier violated the Agreement when it assigned BRAC Mechanics instead of Bridge and Building Department welders to fabricate a swing loader boom at the Duluth Docks on June 11, 12, 13, 14, 15, 18, 22, and 25, 1984.

(2) As a consequence of the aforesaid violation, B&B Welders R. Harvey and R. Julin shall each be allowed forty-six (46) hours of pay at the welder's 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 employe or employees involved in this dispute are respectively carrier and employes 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.

Claimants are welders in the Bridge and Building Sub-Department of the Maintenance of Way and Structures Department. At the time this dispute arose, they were regularly assigned at Carrier's Duluth Docks.

During June of 1984, Carrier assigned two mechanics who hold seniority under the Brotherhood of Railway and Airline Clerks' (BRAC) Agreement to cut and weld structural steel to fabricate a new boom for the swing loader at the Duluth Docks. The mechanics performed the work on June 11, 12, 13, 14, 15, 18, 22 and 25, 1984, expending a total of ninety-two (92) man-hours.

The Organization contends that the disputed work should have been assigned to the Claimants. It argues that the welding of structural steel, particularly the welding of steel to fabricate booms or similar structures, is contractually reserved to its employees under Rule 26, which reads in pertinent part as follows:

"RULE 26
Classification of Work

* * *

(c) An employee assigned to construction, repair, maintenance or dismantling of buildings, bridges or other structures, including the building of concrete forms, erecting falsework, setting of columns, beams, girders, trusses, or in the general structural erection, replacement, maintaining, or dismantling of steel in bridges, buildings or other structures and in the performance of related bridge and building iron work, such as riveting, rivet heating, or who is assigned to miscellaneous mechanics' work, shall be classified as a bridge and building Carpenter and/or Repairman.

* * *

(g) An employee assigned to the operation of any welding device used in the performance of such work as repairing and tempering, grinding, and slotting rails, frogs and switches constitutes a Track Welder, except on rails at the ore docks B&B employees will perform rail welding work. Bridge welding and any other welding in the Maintenance of Way and Structures Department shall constitute a B&B Welder." (Emphasis added.)

In addition, the Organization asserts that the fabrication of booms from structural steel has customarily and traditionally been performed by B&B employees. In support thereof, the Organization proffered letters signed by numerous welders at this facility, stating that it has been the longstanding practice for welders to fabricate booms.

Carrier, on the other hand, insists that there is nothing in the language of Rule 26 which could be construed as granting the exclusive right to fabricate swingloader booms to the B&B craft. Indeed, Carrier argues, the true subject of the rule is work pertaining to structures, particularly bridges and buildings. Nowhere is there any evidence that the rule encompasses the "construction, repair, maintenance or dismantling" of machines, Carrier notes.

It is also Carrier's position that there is no longstanding, systemwide practice which would guarantee that the disputed work be assigned to B&B employees. Two prior instances cited by the Organization during the handling of this dispute on the property where B&B employees built similar extensions hardly constitute a practice, in Carrier's view. Nor are the signed statements of B&B employees probative evidence of historical exclusivity, Carrier stresses, particularly since those statements are refuted by what Carrier claims is the "common knowledge" that other employees, including Ore Dock employees (BRAC) have fabricated parts or end-items over the years from the materials listed in the employees' statements. Absent any evidence of work exclusivity either by rule or practice, Carrier submits that this claim must be denied.

We concur with Carrier's position that nowhere does the record in the instant case speak of B&B employees being exclusively assigned to this type of work or that the work was regularly assigned to them as such. Based on our reading of the plain and unambiguous language of Rule 26, it is clear that the fabrication of a boom for a swingloader is not mentioned, or do we believe that it falls within the rubric of a "structure" as that term is used in the Rule.

The record does reflect that on two occasions, the employees performed work similar to that in question. However, we feel that this is not sufficient to show that the work had been regularly or exclusively assigned to Claimants herein, nor does it unequivocably commit Carrier in the future in its assignment of similar work.

By the same token, the statements of B&B employees cannot be deemed probative evidence, lacking as they are in any type of specificity as to what particular work was performed, when, and by whom. Conclusions are not evidence, and where Carrier has rebutted the employee's contention of exclusivity in fabricating items from the listed materials, we are compelled to conclude that the Organization has not shown that the fabrication of a swingloader boom is work reserved exclusively to its craft by rule, custom or practice.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.



Nancy J. Devor - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1988.