

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 a 'BRAC Mechanic' instead of a Bridge and Building Mechanic to fabricate an outboard motor guard on the B&B Maintenance Raft at Duluth, Minnesota on April 5 and 6, 1984.

(2) Because of the aforesaid violation, B&B Welder S. G. Copiskey shall be allowed sixteen (16) hours of pay at the welder's 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 employe or employes 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.

The Organization alleges that Carrier improperly assigned the work of fabricating an outboard motor guard on the maintenance raft. It maintains that the work violated Rule 26, Classification of Work, and Supplement No. 9, paragraph 1 on the Jurisdiction of Work. It charges that the assignment of the disputed work to a BRAC Mechanic was a clear violation of the Agreement.

Carrier disputes the Organization's claim that the work assigned to BRAC was work exclusively and contractually belonging to Maintenance of Way employees. It contends that there has been no Agreement to assign such work exclusively to any craft.

The third party (BRAC) was informed of the pendency of this dispute before the Third Division and chose not to file a submission in this case.

As the moving party, the Organization must demonstrate that the work belongs to Maintenance of Way employees. This proof can be established either

by a showing of explicit language in the Agreement or by strong probative evidence that its employees have traditionally and historically performed the work on a system wide basis.

This Board's review of the language of the Agreement finds no explicit reference to the disputed work. Rule 26 is a classification of work rule which makes no reference to fabrication, motor guards, or raft maintenance. Supplement No. 9 pertains to the jurisdiction of work between Ore Dock Workers (represented by BRAC) and B&B employees at the ore storage facility. It is the position of the Organization that the language of the Agreement protected the work to its employees. The Board has carefully reviewed the record and determines that the Supplement (supra) does not contain language which provides the exclusive right of B&B employees to fabricate a motor guard on the raft.

Finding no Agreement provision granting exclusive right to the disputed work, the Organization must demonstrate an exclusive system wide past practice of the fabrication of motor guards to the exclusion of all other crafts. As probative evidence the Organization presented over forty identically signed statements which said in pertinent part:

"As a long standing practice, it has been our duties to maintain the maintenance raft, fabrication of booms or any other fabrications of iron, pipe, square steel tubing or sheet metal."

The Organization argues on property that this has been its work exclusively "as long as there has been a B&B maintenance raft..."

After a very careful review of the language of the signed statements the Board finds for the Organization. The Organization presented evidence in said statements from numerous long term employees that the work of fabrication and raft maintenance at both docks had customarily been done by B&B forces for as long as there had been a raft. The Organization claimed exclusive maintenance of the rafts including "all of the structural fabrication, repair, sand blasting and painting.." There is no dispute herein that the disputed work was preventative maintenance on the raft and was not directly related to the operation of the motors. After the Organization established a concrete case, the Carrier offered no effective evidentiary refutation. It presented six items it alleged were fabricated by Ore Dock employees. The Organization responded by noting that two were ore dock mechanics work, one should have been time claimed, two were being time claimed and one had been built by the B&B department. There was no further response, lines of argument or evidence presented by the Carrier on the property. There was no probative evidence that the Organization was not solely responsible for raft maintenance. New lines of argument presented by the Carrier for the first time in its ex parte, particularly its challenges of the statements, comes too late for consideration.

Based upon this record, the Organization has shown with probative evidence that the disputed raft maintenance work at the dock has traditionally been done by the Bridge and Building forces. The Carrier did not deny the


Organization's argument that "the only maintenance we have never done on these rafts is the maintenance of the Outboard Motor and the Water Pump," which was done by BRAC Mechanics. The record contains sufficient probative evidence to sustain the Organization's claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.