

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Union Pacific Railroad Company

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

(1) The Agreement was violated when the Carrier used B&B Welder L. M. Cooper and B&B Painter T. M. Abboud to perform bridge concrete work at the Missouri River Bridge on August 28, 1987, instead of assigning B&B Carpenter M. W. Chew (Carrier's File 870880).

(2) The Agreement was violated when the Carrier used B&B Welder L. M. Cooper and B&B Painter T. M. Abboud to perform repair work on the Omaha Yard electronic scale on September 1 and 2, 1987, instead of assigning B&B Carpenter M. W. Chew (Carrier's File's 870882).

(3) The Agreement was violated when the Carrier used B&B Welder L. M. Cooper and B&B Painter T. M. Abboud to perform crossing renewal work at Craig Street in Omaha, Nebraska on August 27, 1987, instead of assigning B&B Carpenter M. W. Chew (Carrier's File's 870857).

(4) The Agreement was violated when the Carrier used B&B Welder L. M. Cooper to perform crossing renewal work at grade crossings in the Omaha area identified as Pershing Dr., Cornish Blvd., 13th St., Ames St., Grant St. between 12th and 13th and three (3) crossings immediately north of Omaha Shops from October 5 through 9, 1987, instead of assigning B&B Carpenter M. W. Chew (Carrier's File's 870851).

(5) As a consequence of the violation referred to in Part (1) hereof, Claimant M. W. Chew shall be allowed fourteen (14) hours pay at his straight time rate of pay.

(6) As a consequence of the violation referred to in Part (2) hereof, Claimant M. W. Chew shall be allowed twenty (20) hours pay at his straight time rate of pay.

(7) As a consequence of the violation referred to in Part (3) hereof, Claimant M. W. Chew shall be allowed sixteen (16) hours pay at his straight time rate of pay.

(8) As a consequence of the violation referred to in Part (4) hereof, Claimant N. W. Chew shall be allowed thirty-eight (38) hours' pay at his straight time rate of pay."

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 employees 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.

In this detailed dispute involving four Claims, the Organization has argued that the Carrier allowed the Bridge and Building Subdepartment Welder and Painter to do Carpenter's work. In these Claims, bridge embankment stabilization (Claim 1), repairing and adjusting and electronic scale (Claim 2), the renewal of a prefabricated road crossing (Claim 3), and renewing road crossings (Claim 4), the Organization has argued that the work has customarily and traditionally been assigned to the B&B Subdepartment Carpenter.

No dispute ever existed on this property over exclusivity and therefore does not now exist before this Board. We do not find any persuasive argument by the Carrier that the work assigned was not work normally performed by the Subdepartment Carpenter. Sufficient probative evidence was established by the Organization that the bridge embankment (Claim 1) was not an emergency; that the repair and adjustment of the scale did not involve welding or painting (Claim 2); that the road crossing renewal of Claim 3 at Craig Street involved "nothing but Carpenter work" (written statement from Carpenter Moritz which was not refuted); and that renewal of other road crossings (Claim 4) was Carpenter's classification work.

Rule 8 defines the Bridge and Building Subdepartment work. That Rule defines the work to be performed by a Carpenter. Rule 8 states:

"Rule 8. Bridge and Building Subdepartment

The work of construction, maintenance and repair of buildings, bridges, tunnels...and other structures, turntables, platforms, walks, snow and sand fences, signs and similar structures as well as all appurtenances thereto, and other work generally so recognized shall be performed by employees in the Bridge and Building Subdepartment."

Section 1 Bridge and Building Carpenter:

An employe assigned to the construction, repair and maintenance of buildings, bridges or other structures, ... or who is assigned to miscellaneous mechanic's work of this nature, shall constitute a bridge and building carpenter."

A review of that Rule (and Rule 13) compared to the work herein disputed and considering the arguments and issues raised by the Carrier on property results in our conclusion that the work belonged to the Bridge and Building Subdepartment Carpenter. The Carrier never refuted the Organization's probative evidence, nor argued that Welders or Painters on this property or system-wide had the right to perform such work. Arguments of an emergency, the need for a welder, the utilization as a Truck Driver and Boom Operator and incidental work performed under Rule 5 were refuted and are unconvincing in these facts and circumstances.

The Board sustains the combined Claims. Carrier's consistent argument that nothing in Rule 8 (Work Classification Rules) assigns this work to Carpenters is rejected by this Board (Third Division 25830). The Board also denies the Carrier's view that since the Claimant was fully employed and suffered no monetary loss, he is not entitled to "enrichment." There is no evidence that these four jobs could not have been assigned the Claimant at some point. They were not shown to be required on the dates in question. Given the undisputed record of the Claimant's hours worked in the previous seventeen (17) months, the Claim is sustained in these instant circumstances.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Devel - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.