

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31245
Docket No. MW-27464
95-3-86-3-705

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

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

STATEMENT OF CLAIM:

- "(1) The Carrier violated the Agreement when it assigned Store Department forces instead of Bridge and Building Department forces to assemble and install shelving in the Omaha Store Building on August 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, and 21, 1985 (System File M-204/013-210-8).
- (2) As a consequence of the aforesaid violation, B&B Foreman, R.T. Branting and Carpenters K.E. Boardman, I.S. Shannon, W.L. Bishop, Z.S. Moritz, J.A. Heywood, R.L. Jones, R.D. Cutsor, S.M. Foster and R.E. Portis shall each be allowed 53.45 hours of pay at their respective straight rates."

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.

The Brotherhood of Railway, Airline and Steamship Clerks and the Sheet Metal Workers International Association were determined to be Third Parties of Interest. Those Organizations were notified of the pendency of this dispute, but neither submitted a response.

This is a claim involving the assignment of shelving work to the Store Department Clerks instead of the Bridge and Building Sub-department employees in August of 1985.

The Board has considered both Parties' Ex Parte Submissions and responses. Based on the record evidence, the Parties' Submissions and their Agreement, the Board concludes that the Carrier did not violate the Agreement by assigning Store Department forces instead of Bridge and Building Department forces to assemble and install shelving in the Omaha Store Building on August 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, and 21, 1985. The Board's findings, reasoning and conclusions are discussed below.

The Carrier argues that there are four issues, as noted above, involved in the instant grievance. It is the Board's opinion, however, that at the heart of the grievance is whether the work in question belongs to the Organization's Bridge and Building members exclusively under Rule 8. Accordingly, the instant grievance will be considered in light of the Parties' express contract language found in Rule 8 of the Agreement.

It is a well-established arbitral principle that if contract language is clear and unequivocal, an arbitrator will not give the contract language any other meaning than that which is expressed. Frank and Edna Elkouri, How Arbitration Works, (BNA, 4th ed. 1983, pp. 348-349). While the parties to a contract interpretation dispute may disagree over the meaning of the contract language, an arbitrator who finds the language in question to be unambiguous will enforce the clear meaning of the Agreement. See, e.g. How Arbitration Works (at pg. 349). To do otherwise would allow the arbitrator to improperly legislate new language and "usurp the role of the labor organization and employer." See, Clean Coverall Supply Co., 47 LA 272, 277 (1966).

In the instant case, the work in question involved the assembly and installation of pre-fabricated shelving. The Organization argues that Rule 8 specifically stipulates that the work of construction, maintenance and repair of buildings as well as all appurtenances thereto, including general carpentry, building and repairing built in office fixtures and setting up cabinet work is contractually reserved to employees within the Bridge and Building Sub-department under Rule 8. The Organization contends that construction and installation of shelving is within the scope of Rule 8. The Organization therefore maintains that the assignment of such work, which was work originally assigned to Bridge and Building Sub-department employees, and then given to the clerks, was in violation of the Agreement.

The Carrier contends that the work in question is not reserved exclusively to the Bridge and Building Department employees under Rule 8. The Carrier submits that the disputed work consisted of the assembly of free-standing shelves purchased in a fabricated and completely manufactured form. The Carrier argues that the shelving and frames were not constructed on the property. In addition, the Carrier maintains that the shelves were assembled without tools or any mechanical skill and are not attached to the ceiling or floor. The Carrier specifically notes that the Organization's initial claim clearly stated that the work at issue only consisted of "putting new shelving together and installing new shelving."

The Board agrees with the Carrier that Rule 8 of the Parties' Agreement does not support the Organization's position. The Board is confined to interpreting the express language of the Parties' Agreement in determining the scope of Rule 8. The Board finds that the work of assembling free-standing shelves, which were purchased fabricated and completely manufactured, and that are assembled without tools or mechanical skills is not expressly identified as work belonging exclusively to the Bridge and Building employees under Rule 8 of the Agreement.

In addition, the Board notes that the Carrier submitted credible evidence that such shelving work has been performed by other crafts, notably BRAC clerks, in the past. The Carrier admits that while the Bridge and Building employees have in fact performed such work, as shown by the employee statements submitted by the Organization, it does not mean that the Bridge & Building employees have the exclusive right to perform such work under Rule 8. The Board agrees that absent specific contract language expressly and exclusively reserving such work to the Bridge and Building employees, the Carrier is free to assign such work to other crafts.

Based on the foregoing, the Board must deny the instant claim.

AWARD

Claim Denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.