

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

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

(1) That the Carrier violated the provisions of the current agreement on June 24, 1947, in assigning work covered by the Scope of its agreement with the Brotherhood of Maintenance of Way Employees not covered by the Scope of this agreement;

(2) That First Class B&B Carpenter Lester Mathies be allowed eight (8) hours' pay because of this violation of the agreement.

EMPLOYEES' STATEMENT OF FACTS: Lester Mathies is a B&B Mechanic employed at Armedale Yards, Missouri and Kansas Division. On June 24, 1947, Engine Cab Carpenters were assigned and made repairs to a partition between the roundhouse office and the roundhouse. No. B&B Carpenter was assigned to perform this work.

Agreement dated May 1, 1938, and its subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: There can be no doubt but that the work performed at Armedale roundhouse by these Cab Carpenters was definitely work belonging to employees with seniority in the B&B Department.

Rule 1 Scope, of the current agreement, states as follows:

"RULE 1. SCOPE. These rules will govern the hours of service and working conditions of all employees not including supervisory forces above the rank of foreman, performing work of a maintenance and construction character in Maintenance of Way Department (not including Signal, Telegraph and Telephone Maintenance Department, nor employees performing work of a clerical nature) and employees listed below:

Coal Chute Foremen
Coal Chute Laborers
Locomotive Fuel Oil Handlers
Sand House Men
Track, Tunnel, Bridge and Highway Crossing
Watchmen
Maintenance of Way Department Welder Foremen,
Welders, Grinders and Helpers
Roadway Machine Operators and Helpers.

Board whereupon the carrier's Manager of Personnel, under date of January 23, 1948, advised Mr. Fisher as follows:

"Your letter January 6, 1948, re claim of B&B Carpenter Lester Mathies, Armourdale, June 24, 1947:

"We do not consider the making of a box for filing purposes as work covered by your agreement. In the instant case, the work on the office window and the box consumed only four hours' time. However, as previously advised, the work was performed during the time Mr. Mathies was actually working and under pay as a B&B carpenter and we do not find where he was injured in any respect.

"We definitely decline your claim and do not care to join with you in submitting the case to the Adjustment Board."

We urge that the facts as we have developed them in this matter do not indicate a violation of the controlling agreement as alleged by petitioner, and therefore the claim should be denied. However, if the Board should be in disagreement with our position, we direct attention to the fact that the Claimant lost no time inasmuch as he worked a full eight hours on June 24, 1947 and was compensated for that service.

(Exhibits not reproduced.)

OPINION OF BOARD: On June 24, 1947, the Carrier assigned an Engine Cab Carpenter to make certain alterations at the Armedale roundhouse office. The work done is described as follows: The windows in the partition which separates the roundhouse office from the roundhouse were taken out and the opening closed up with car siding; a window was cut in two and made to slide back and forth, filling the balance of the opening. A box 2' 10" x 12" x 12" was installed to be used for collecting bids, time slips and work reports. This work was clearly within the scope rule of the Maintenance of Way Agreement and belonged to Bridge and Building Department employees under that Agreement. The general rule is that a Carrier may not contract with others for the performance of work embraced within the scope rule of a collective agreement made for the benefit of employees under such agreement. Award 3251.

The Carrier contends that the work did not take eight hours to perform as alleged by the Organization. The evidence is somewhat in conflict on this point. In view of the fact that Carrier made no issue on the property as to the number of hours required to do the work, we must treat the issue raised here for the first time as a variance with the issues discussed on the property. Under the record as made, the violation will be treated as requiring eight hours to perform.

The Carrier urges that as Claimant worked his assignment on the day the work was performed, that no basis for a money claim exists. The rule is: "Where work is within the scope of a collective agreement, and not within any exception contained in that agreement or any exception recognized as inherently existent as hereinbefore discussed, we feel obliged to adhere to the fundamental rule that the work belongs to the employees under the agreement and that it may not be farmed out with impunity." Award 3251.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 28th day of April, 1949.