

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN RAILWAY COMPANY

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

(1) That the Carrier violated the effective agreement by assigning Carmen in the Planing Mill at Birmingham, Alabama, to the building and painting of five First Aid Buildings during the period February 28 to March 6, 1948;

(2) That the following B&B Employees at Birmingham, Alabama:

B&B Foreman C. H. Morrell
B&B Mechanic J. C. Simpson
B&B Mechanic A. W. Buth
B&B Mechanic R. L. Barnes
B&B Mechanic H. N. McGraw
B&B Mechanic J. G. Blankenship
B&B Helper A. C. Mauk
B&B Helper E. O. Cox
B&B Helper L. B. Smith
B&B Helper Percy Porter

be compensated at an equal share, at their respective rates of pay, of the total time worked by the Carmen in the construction and painting of these referred to buildings.

EMPLOYEES' STATEMENT OF FACTS: Commencing on or about February 28, 1948, the Carrier assigned certain of its Carmen in the Planing Mill at Birmingham, Alabama to the work of constructing and painting five (5) First Aid Buildings. This assignment of these Carmen was completed on March 6, 1948. These buildings, upon completion, were set up upon suitable foundations in the following locations:

One at the Finley Roundhouse.
One at the Steel Car Shop Annex.
One at the Car Inspector's Office, Finley Yard.
One at the Car Inspector's Office, AGS Yard.
One at Coach Yard Office.

"Carmen may also be used to make other repairs not enumerated herein when volume of job or jobs in combination is not sufficient to justify bringing in a minimum maintenance force. (A minimum force shall be considered to be not less than Foreman and five (5) men.)"

In making this contention, the employees completely disregard the fact that the interpretation of September 3, 1926 deals solely with the words **"this to include minor repairs to shop buildings"** in Rule 149, and that it has no application whatever to that part of the rule immediately preceding those words: i.e., **"planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards."** Paragraph 6 of the interpretation itself refers to "other repairs not enumerated herein." Certainly there can be no plausible basis for the contention that first aid booths are shop buildings, or that the work of constructing the booths in the planing mill constituted repairs to shop buildings.

When the Carrier informed General Chairman Sorah that the first aid booths were not shop buildings and that the work of constructing them did not constitute the performance of minor repairs to shop buildings, the General Chairman replied "That being the case, the Carmen were not permitted to build them under the provisions of Mr. Mackay's interpretation of minor repairs to shop buildings appearing in Rule 149 of the Shopcrafts' agreement." (Carrier's Exhibit A-20.)

The dispute therefore narrows down to whether the work should have been assigned to Maintenance of Way employees under the provisions of Mr. Mackay's interpretation of Rule 149 having reference to minor repairs to shop buildings, as contended by the employees, or whether it was properly assigned to shop employees under those provisions of Rule 149 which are in no way related to the interpretation, as contended by the Carrier.

Shop employees in the past have always built facilities for use in shop yards and buildings when such facilities are not fixtures and do not become a part of an existing structure. B&B employees admittedly have the right to perform certain repair work to shop buildings, and shop employees admittedly have the right to perform the repair work which is interdicted by the interpretation, but there is nothing in the Maintenance of Way agreement or in the interpretation which gives to B&B employees the exclusive right to make facilities, for use in shop yards and buildings, which are not fixtures and do not form a part of the existing shop structures.

The evidence in this case clearly shows that the employees have misconstrued the provisions of Rule 149 of Shopcrafts' agreement and the interpretation of September 3, 1926 pertaining to repairs to shop buildings, that no violation of the Maintenance of Way agreement has occurred, and that the work was properly assigned to and performed by shop employees in the planing mill. Parts (1) and (2) of the claim should be denied, and for the reasons given the carrier respectfully requests that the Board so hold.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood contends the Carrier violated their effective Agreement by having Carmen in the Planing Mill at Birmingham, Alabama, build and paint five First Aid Buildings. It asks that the ten named B&B employees at Birmingham be compensated on an equal basis, at their respective rates of pay, to the extent of the time worked by the Carmen in doing this work.

We find the Carrier's contention that this is a jurisdictional dispute between two classes or crafts of employees as to which is entitled to perform a certain type of work, of which this Board has no jurisdiction, to be without merit. This is a claim relating to a violation of the Scope of the Brotherhood of Maintenance of Way Employees' Agreement by the removal of work therefrom. Such is within the jurisdiction of the Board.

The work here complained of as having been performed by Carmen in the Planing Mill of the Finley Shops at Birmingham, Alabama, in violation

of the Scope of the Brotherhood's Agreement was done between February 28, 1948 and March 6, 1948. It consisted of the following: The construction, erection and painting of five First Aid Buildings, which were located and placed on foundations at the following locations: one at the Finley Roundhouse, one at the Steel Car Shop Annex, one at the Car Inspectors office in the Finley Yard, one at the Car Inspector's Office in AGS Yard and one at the Coach Yard Office. These buildings were 6' by 8' and 8' in height. They are of wooden construction and each building contains one door and two windows.

The Scope Rule of the Agreement herein involved embraces all work which employes therein included usually and customarily performed at the time of the negotiation and execution thereof. In view thereof we find the construction, erection and painting of these buildings to be within the scope of the Brotherhood of Maintenance of Way Agreement.

When work is within the scope of a collective agreement and not within any exception contained therein or any exception recognized as inherently existent, that work belongs to the employes under the agreement and may not be taken therefrom with impunity.

With reference to C. D. Mackay's interpretation of Rule 149 of the Shop Crafts' Agreement, dated September 3, 1926 and relating to situations where Carmen have the right to make minor repairs to Shop Buildings, we find it has no application to the factual situation before us except to emphasize the limitations which exist with reference to the Carmen's right to do this type of work.

The work here done being within the Scope of the Brotherhood's Agreement and not expressly excepted therefrom nor of such a character that it is inherently excepted therefrom it was a violation for Carrier to have it performed by Carmen and the claim is therefore sustained.

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 Employes involved in this dispute are respectively carrier and employes 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

That Carrier has violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1949.