

Award No. 7588

Docket No. MW-7419

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY

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

(1) The Carrier violated and continues to violate the Union Shop Agreement of July 1, 1953, when it failed and refuses to notify Painter C. F. McCarthy, and Carpenters W. F. Miller, A. M. Swanson, and B. J. Kelly that they were charged with non-compliance of the aforesaid Union Shop Agreement in compliance with notices dated May 12, 1954, addressed to and received by General Manager F. W. Bellinger, all in accordance with the provisions of Section 5 (a) of the Union Shop Agreement of July 1, 1953;

(2) The Carrier shall be required and ordered to comply with the requests outlined in the aforesaid notices dated May 12, 1954;

(3) In addition to other compensation received, Employees J. F. Young, R. P. Mengon, R. Larello, and Joseph J. Larello each be allowed one day's pay at the applicable B&B Carpenter and Painter's rate for each day in which Messrs. C. F. McCarthy, W. F. Miller, A. M. Swanson, and B. J. Kelly are permitted to perform B&B Carpenter and/or Painter work under the scope of the effective Agreement since the Carrier's refusal to comply with the aforesaid citation notices dated May 12, 1954.

EMPLOYEES' STATEMENT OF FACTS: Positions of Bridge and Building Painters, Carpenters, and Bridge and Building Foremen were embraced within, covered by, and subject to the Rules and Working Conditions Agreement effective July 18, 1938, between the Butte, Anaconda and Pacific Railway Company and the Brotherhood of Maintenance of Way Employees. A new Rules and Working Conditions Agreement effective as of July 1, 1952, was subsequently negotiated between the Butte, Anaconda and Pacific Railway Company and the Brotherhood of Maintenance of Way Employees which superseded the aforesaid Rules and Working Conditions Agreement of July 18, 1938. Positions of Bridge and Building Painters, Carpenters, and Bridge and Building Foremen are similarly embraced within, covered by, and subject to the new and currently effective Rules and Working Conditions Agreement of July 1, 1952.

Employees occupying positions of Bridge and Building Painters and Carpenters are subject to both the bulletining and displacement rules of the

penters and painters was incorporated therein, excluding them from the scope provisions of the agreement.

3) Such employes so excepted therefore could not be considered subject to the terms and provisions of the Union Shop Agreement, effective July 1, 1953, since they were not at that time, or prior thereto, or thereafter, subject to the rules and working conditions of the master working agreement with the BMW, effective July 18, 1938.

4) The carrier does not admit that it has violated in any way the Union Shop Agreement of July 1, 1953 by failure to serve the citation notices to the four (4) listed individuals.

5) The carrier does not agree that it should be required and ordered to comply with the organization's request outlined in the notices dated May 12, 1954.

6) The carrier does not agree that it should be required to pay additional compensation, in addition to other wages already received, to Employees J. F. Young, R. P. Mengon, R. Lorello, and Joseph J. Lorello, for each day that Messrs. C. F. McCarthy, W. F. Miller, A. M. Swanson, and V. J. Kelly render service for the carrier in the Bridge & Building Department.

7) It would be a breach of faith and contractual relations for the carrier to arbitrarily serve the citation notices on these employes since a separate working agreement with their occupational groups has been in effect for many years.

8) Finally, for the information and guidance of the Board, the carrier wishes to state that this alleged dispute has never been the subject of a formal conference on this property. The entire matter has been handled by correspondence only, and no effort has been made by the organization to hear all parties involved voice their opinions and present their case at a regular meeting called for that purpose on the property of the carrier.

THEREFORE, the carrier respectfully submits the foregoing evidence for the consideration of the Board and requests a favorable decision on the strength of the facts in the case itself and its desire to be fair and impartial to all employes in the service of the Railroad.

All data referred to herein are on file with the carrier.

(Exhibits not reproduced.)

OPINION OF BOARD: Under the terms of the Union Shop Agreement between the parties, it is applicable to all employes subject to the Rules Agreement except those occupying positions which are excepted from the bulletining and displacement rules of the Rules Agreement. Under Section 5 of the Union Shop Agreement, the Organization may notify the Carrier that an employe is not in compliance with that Agreement and request his discharge. The Carrier is then required to notify the employe that it has received such notice from the Organization. If the employe wishes to dispute the allegation that he is not in compliance with the Agreement, he may request a hearing. There are then provisions for appeal culminating in the appointment of a neutral arbitrator, whose decision in the matter is final and binding.

On May 12, 1954, the Organization notified the Carrier that four named employes had failed to comply with the Union Shop Agreement. Carrier refused to so notify the employes on the ground that they were not subject to the Rules Agreement between the parties and therefore were not subject to the Union Shop Agreement. Correspondence ensued between the parties, with the Organization claiming that the four employes were covered by its Rules Agreement with the Carrier, and the Carrier claiming that they were covered by an agreement between the Carrier and an entirely different labor

organization. After the Carrier's General Manager declined to send the notices and declined to join in a submission to this Board, the Organization filed an ex parte submission claiming that Carrier had violated the Union Shop Agreement in failing to send the notices, requesting that the Carrier be ordered to send the notices, and claiming a day's pay for four of its members for each day that the four allegedly non-complying employees have been allowed to work since Carrier's refusal to send the notices.

The question to be answered is whether the four involved employees are covered by the Rules Agreement. This question involves interpretation of the Scope Rule of that Agreement and under ordinary circumstances would be a proper one for determination by this Board. However, the question arises in connection with a dispute as to whether these employees have complied with the Union Shop Agreement, and its determination may be the deciding factor in that dispute. The determination of such disputes has been removed from this Board by a specific agreement between the parties to have such questions settled by a neutral arbitrator. Therefore, as has been held in Awards 6744 and 7085 of this Division, the proper method of resolving the issue in this case is for the Carrier to forward the notices to the affected employees and to raise the issues raised here if and when those employees request the hearing to which they are entitled under the Union Shop Agreement. In those cases, it was agreed that the employees involved were covered by the Scope Rules of the Rules Agreement, which is the disputed issue here. But the dispute in each of those Awards was whether the employees occupied positions which were excepted from the bulletining and displacement rules of the Rules Agreement, and thus were excepted from the coverage of the Union Shop Agreement. That dispute, no less than the dispute here, involved the interpretation of the Rules Agreement, and the principles enunciated and followed in the cited Awards are equally applicable in this case. Paragraphs (1) and (2) of the claim are therefore sustained. Paragraph (3) is remanded pending determination of the dispute on its merits under the procedure provided in the Union Shop Agreement.

Carrier urges dismissal of the claim on two jurisdictional grounds—improper handling on the property and lack of third-party notice. Neither of these grounds supports a dismissal award. See Award 6744 as to the first and Award 7387 as to the second.

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

That the Agreement was violated.

AWARD

Claims (1) and (2) sustained. Claim (3) remanded in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1956.