Award No. 7792
Docket No. MW-7552

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned the work of repairing the freight house office door at Flora, Illinois, to a freight house trucker who holds no seniority rights under this agreement;

(2) Bridge and Building Carpenter O. D. Stanley, Sr., be allowed four (4) hours' pay at the straight-time rate of pay because of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On February 11, 1954, repairs to the freight house office door at Flora, Illinois, consisting of removing, repairing, and replacing the lock, was assigned to and performed by a freight house trucker.

The Claimant, Bridge and Building Carpenter O. D. Stanley, Sr., who was laid off because of force reduction on the date here in question, was available and fully qualified to perform the work described above, but was not called to do so.

Under date of March 19, 1954, the Claimant protested the Agreement violation and submitted the instant claim to the Carrier's Division Engineer.

The claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On February 11, 1954 the spring in the lock on the Freight House office dor, at Flora, Illinois, became inorperative.

On that date one of the Freight House truckers working at that point spent forty minutes repairing the spring in the lock so that the door could be kept closed.

Certainly what work of a locksmith was performed involved all phases related to repairing the spring in the lock.

There is no showing that the Maintenance-of-Way contract reserves to B&B employes the performance of locksmith work. There is no rule in the agreement to support the conclusion that any work of this kind or nature falls either solely or exclusively to employes covered by that contract.

The rule and the agreement is impressive by its silence on this subject.

The Carrier submits that this claim is without merit and respectfully requests that this Division so hold and deny it accordingly.

OPINION OF BOARD: This claim is made for a call, in behalf of B. & B. Carpenter, O. D. Stanley Sr., account of Respondent's alleged failure to call him, on February 11, 1954, when he was available, to make repairs on a lock on the freight house door at Flora, Illinois.

The Organization takes the position that the work in question was improperly delegated to a freight house trucker for this type of work is covered by the Scope Rule of the effective Agreement and has been at all times in the past performed by B. & B. carpenters when such carpenters were, as here, available to perform the work.

The Respondent counters with the assertion that the repair of the lock in question was "locksmithing" as such, and since the Scope Rule does not enumerate this type of work it cannot properly be said that such work belongs to those covered by this agreement to the exclusion of all others. It was further contended that it could not determine any past practice as to assigning lock repair work, and finally that even though there was a violation, the trivial amount of work here would not justify the allowance of a call.

That this was not intricate locksmith work is evidenced by the fact that these lock repairs were made in the first instance by a freight house trucker. This is further born out by the fact that similar repairs were required on the same lock and door shortly after the date in question and were assigned to and performed by B&B carpenters. We conclude that the nature of the work was of the type that could readily be performed by carpenters. The mere statement of the Respondent, that it could not determine what the past practice was, being wholly unsupported by other evidence, carries little weight.

While the Scope Rule does not specifically enumerate all work encompassed by it, we are of the opinion that the work here is the type traditionally and customarily performed by carpenters.

In Award 3864 we stated:

> This Division has often stated the rule that work of a class covered by the Scope Rule of an agreement and not within any exception contained therein or within any exception recognized by this Board belongs to the employes in whose behalf it was made and cannot be delegated to others without violating the agreement. It imposes a definite obligation upon the Carrier to assign work covered by the Agreement to the employes specified.

What was said there is applicable here and a sustaining award is justified.

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 the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 15th day of March, 1957.