

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

READING COMPANY

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

(1) The Carrier violated the Agreement when it assigned the work of dismantling a concrete battery house located East of "BY" Tower, Bethlehem to section laborers instead of to masons and mason helpers;

(2) The masons and mason helpers holding seniority as such in the seniority district in which the disputed work was performed each be allowed pay at their respective straight-time rates for an equal proportionate share of the total man-hours consumed by other forces in performing the work referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On various dates during August and September, 1953, a concrete battery house, located approximately ten (10) feet from near rail of No. 2 eastward main track and about 200 feet west of old "BY" Tower, Bethlehem Branch, was demolished by section laborers, and refuse was removed by work train. This battery house was constructed of concrete sides and roof and measured 6 feet 10 inches on front and 9 feet 4 inches deep at foundation line, and 7 feet 10 inches to highest point of roof; house had a wooden door in front 2 feet 2 inches wide and 5 feet 9 inches high, and four 1½ inches diameter pipes near eave for ventilation.

This battery house was originally constructed and has been maintained and repaired by the Carrier's masonry forces. Masonry forces have heretofore been used to dismantle and demolish structures which have been constructed, maintained, and repaired by them while the structure was in use.

POSITION OF EMPLOYEES: Rule 1 of the effective agreement reads as follows:

"RULE 1—SCOPE

The rules contained herein shall govern the hours of service, working conditions and rates of pay of the following classes in the Maintenance of Way Department, including those employes at Port Richmond, Port Reading and Reading Frog Shop:

respectfully requests the Board to so find and deny the claim. The evidence contained in this submission has been discussed in conference and handled by correspondence with the representative of the Brotherhood of Maintenance of Way Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On various dates in August and September, 1953, a concrete battery house, 6' 10" x 9' 4" x 7' 10", with a wooden door 2' 2" x 5' 9" and with four 1½" ventilation pipes, was demolished by section laborers and the refuse removed by work train. Section laborers are also covered by the Agreement here.

Employees contend that the battery house was originally constructed and has been maintained by Carrier's masonry forces. They allege a practice that masonry forces dismantled and demolished structures which have been constructed, maintained, and repaired by them while the structure was in use. Also that claimants' seniority rights were violated.

The Carrier denies that the battery house was constructed by masons, but rather by carpenters, or that there was any practice on this property that would give masons the exclusive right to demolish battery houses. The Carrier contends that there was no requirement here for any special skill or experience of a mechanic nor did it require the use of any tools or equipment other than those customarily used by section forces in the performance of their usual duty. The Carrier also maintains that since 1917 several hundred battery houses have been demolished on this property and the great majority were demolished by section forces. Carrier further asserts that the Agreement does not contain any rule defining the duties of work of the various classifications of employees covered by the Scope Rule of the Agreement.

The Board, in its determination of this docket, will not consider Carrier's exhibits in its last submission, the dates of which clearly indicate that they could not have been presented to the employees and made a part of the question in dispute as required by Circular No. 1.

The Agreement before us, the Scope Rule of which is set forth below, contains no classification of work rule. It merely lists the classes of employees for whom the Agreement governs the hours of service, working conditions and rates of pay.

"RULE 1—SCOPE

The rules contained herein shall govern the hours of service, working conditions and rates of pay of the following classes in the Maintenance of Way Department, including those employees at Port Richmond, Port Reading and Reading Frog Shop:

Bridge and Building Foremen, Inspectors, Gang Leaders, Mechanics and their helpers, viz.: Carpenters, Painters, Masons, Blacksmiths, Plumbers, Tinsmiths.

Section Track, Work Train, Extra Gang Foremen, Assistant Foremen and Sub-Foremen.

Fence repairmen and all laborers in the Maintenance of Way Department.

Fire Equipment Inspector, Port Richmond.

Crossing and other Watchmen, Drawbridge Tenders, Pumpmen, Lampmen, Frog, Switch and Rail Repairmen, Crane and other machine operators, including Chauffeurs."

As this Board has often said in interpreting a scope rule of this character the work reserved to the various classes of employees is that which is historically and customarily performed by that group. The interpretation which the parties themselves have made, with reference to the type of work involved, in the past furnishes a controlling guide as to what was intended. We must find from the facts of record here that the work of demolishing battery houses has not been recognized as masonry work exclusively, and as a matter of fact the evidence supports a finding that such work had been historically and customarily performed by section forces included within the same scope rule. We will adhere to the result achieved by the mutual interpretation of the parties of their Agreement which recognizes that the work was not exclusively that of masons and for that reason the claim must fail.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1957.