

**Award No. 9551**

**Docket No. MW-7887**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Merton C. Bernstein, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**DELAWARE AND HUDSON RAILROAD CORPORATION**

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

1. The Carrier violated the effective Agreement on April 25, 26, 27, 1951 and May 1, 1951, when it assigned the work of repairing a bungalow to employees who held no seniority rights under this Agreement;
2. The employees holding seniority rights in the Bridge and Building sub-department each be paid an equal proportionate share of the total man-hours consumed by the Signal Department employees in performing the work referred to in part one (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** On April 25, 26, 27, 1951 and May 1, 1951, the Carrier assigned two (2) Signal Department employees to repair a C.T.C. bungalow at "WE", which had been damaged when struck by a tire becoming detached from an engine wheel. These Signal Department employees each worked eight (8) hours on the four (4) days in question. The erection and painting of all buildings heretofore has been performed by employees covered under the scope of the effective Agreement between the Carrier and this Brotherhood. The erection and painting of buildings has always been considered as Bridge and Building work.

The Employees have claimed that the Carrier violated the Agreement when they assigned this work to the Signal Department employees. The Carrier has denied the claim.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** Work in connection with erecting, repairing, maintaining and dismantling railroad buildings and structures is work traditionally and historically performed by Maintenance of Way Bridge and Building Department Employees. Therefore, when this Carrier assigned Signal Department Employees the work of repairing the bungalow at "WE", the Em-

It is the carrier's position that claim should be denied on its merits. Any award rendered which effects the rights of signalmen will be invalid unless the Brotherhood of Railroad Signalmen of America is given notice of hearing by the Adjustment Board in accordance with Section 3, first, (j) of the Railway Labor Act.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

**OPINION OF BOARD:** The claimed violation consists of awarding to employees (Signalmen) outside the Agreement work properly belonging to employees under the Agreement as conferred by the Scope Rule.

However, the Scope Rule only describes the employees covered but not the kinds of work. Accordingly, it is appropriate to consider custom and practice existing prior to the Agreement to ascertain coverage. Award 8755 (Semp-liner) involving the same parties.

For its part the Organization asserts that "The erection and painting of all buildings heretofore has been performed by employees covered under the scope of the effective agreement . . ." and that "Work in connection with erecting, repairing, maintaining and dismantling railroad buildings and structures is work traditionally and historically performed by Maintenance of Way Bridge and Building Department Employees" (emphasis ours).

In other words, so far as this Agreement is concerned the Organization claims performance only of "erecting" and "painting" buildings. In contrast, it asserts a general tradition of repair and maintenance of buildings.

It is to be noted that the Claimant does not assert that any repair or maintenance, other than scheduled painting, of structures of the kind involved in this dispute has actually been performed by B & B personnel on this property. The Carrier does assert, and it is not denied, that the work of the kind involved here was performed by Signalmen prior to the first agreement between the Carrier and the Organization.

Award 4845 (Carter), urged as a precedent by Claimant, involved construction of buildings. Award 4846 (Carter) was treated as associated with Award 4845 and was buttressed by the fact that the Agreement covered "gate maintainers", thereby demonstrating that gate maintenance was meant to belong under the Maintenance of Way Agreement. Award 8755 also involved construction. We fail to see how these cases support the claim.

We hold that Claimant has failed to prove that the work in dispute, repair of an undisclosed nature of a signal bungalow, belongs under the Maintenance of Way Agreement on this property.

**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 contract was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of September, 1960.