

Award No. 10931

Docket No. MW-9664

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Wesley Miller, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
SOUTHERN RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement when on January 28 and 29, 1956, it assigned other than Bridge and Building employes to perform the work of repairing pallets at its Freight House in Birmingham, Alabama.

(2) B&B Mechanic L. B. Smith be allowed sixteen hours' pay at his straight time rate because of the violation referred to in part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** The Carrier utilizes a number of pallets in connection with its freight handling operations at its Freight House at Birmingham, Alabama.

On January 28 and 29, 1956, the work of repairing the pallets at the above referred to Freight House was assigned to and performed by a Freight House Laborer, who holds no seniority rights under the provisions of this Agreement. Sixteen hours were consumed by the Freight House Laborer in the performance of this work. The work of constructing, maintaining or repairing pallets is work of the character that has heretofore been usually and customarily performed by the Carrier's Maintenance of Way and Structures Department employes.

The claimant Bridge and Building Mechanic was available, fully qualified, and could have expeditiously performed the pallet repair work here involved, had the Carrier so desired.

The Agreement violation was protested and a suitable claim filed in behalf of the Claimant. The claim was handled in the usual manner on the property and declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated August 1, 1947, together with supplements, amendments, and interpretations thereto, is by reference made a part of this Statement of Facts.

Carrier not having seen the Brotherhood's submission reserves the right to reply thereto.

(Exhibits not reproduced.)

**OPINION OF BOARD:** It has been alleged in behalf of the Carrier that the Clerks' Organization is involved herein; however, in our opinion a jurisdictional dispute is not before us. Award 5432. The record shows that the clerks were notified of the pendency of the Claim and that the Brotherhood of Railway & Steamship Clerks declined the opportunity to participate in this proceeding.

Turning to the merits of the Claim at hand, we find that the scope rule of the applicable agreement of the parties pertains to the hours of service and working conditions of the Employees represented by the petitioning Organization. This rule lists positions covered by the agreement, e.g., "Bridge and Building Sub-department Mechanics," but does not purport to describe or define the work belonging to these respective positions.

Lacking specific contractual language clarifying the matter, it has been the policy of the Board to consider the past practice of the parties in determining whether the work in issue belongs to the complaining craft. History and tradition have been and still are useful guides; however, if the case of the Organization is grounded on a past practice theory, it is essential that the Employees produce clear and convincing evidence. It is not sufficient for them to show that they have performed the work in dispute on some occasions. Award 9047 (among many others).

In the instant Claim, the evidentiary data is insufficient to establish the allegation that repairing pallets was exclusively B&B work at the location involved. The few testimonial type statements placed in the record by the Employees are devoid of assertions which would help prove exclusiveness. Moreover, there is a substantial degree of doubt that these statements were shown the Carrier during the period the Claim was handled on the property. Please see Circular No. 1.

Therefore, inasmuch as the Claim cannot be sustained by the express language of the agreement, and the evidence offered in support of past practice is inadequate, it must be denied.

**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: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1962.