

Award No. 11831

Docket No. MW-9467

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DENVER AND RIO GRANDE WESTERN

RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when, on December 3 and 7, 1955, it assigned other than Bridge and Building Department employees to erect a fence in front of its Laboratory Building at Burnham, Colorado.

(2) B & B Foreman E. L. Richie, B & B Carpenters, P. L. Maes, Pat Barrett, A. R. Litzenger and Painter H. T. Bureman each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the other employees and/or individuals in performing the work referred to in part one (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On December 3 and 7, 1955 the work of erecting a fence in front of the Carrier's Laboratory Building at Burnham, Colorado was assigned to two Boy Scouts and to three (3) Car Department employees who held no seniority rights under the provisions of this Agreement.

The work consisted of the framing of eight (8), 6" x 6" x 48" posts; the drilling of a hole near the top of each post, through which a chain was to be inserted and installed, connecting the posts together; the necessary excavation, placing of the posts and the painting thereof. Six hours were consumed by the Boy Scouts in excavating and placing posts; one and one-half hours by a Car Department Helper in performing identical work; three hours by a Carman in framing and drilling the posts; and one-half hour by a Car Department painter in the painting thereof or a total of 11 man-hours consumed in the performance of this work.

The work is of the nature and character usually and customarily performed by the Carrier's Bridge and Building Department employees.

The employees holding seniority in the Bridge and Building Department were available and could have expediently performed the work described herein, had the Carrier been so inclined.

offices of the Master Mechanic, General Storekeeper, Research Engineer, General Car Foreman and others at Burnham.

The instant claim is the first ever presented by the Maintenance of Way forces in connection with the landscaping project of the Boy Scouts.

POSITION OF CARRIER: As previously stated, for more than twenty years Carrier's shopmen at Burnham have sponsored three troops of Boy Scouts, all members of which are sons of the shopmen.

The prime project of the Scouts, since their sponsorship by the shopmen began more than twenty years ago, has been the landscaping of the premises—including the care thereof and the fencing around the landscaping—of the various buildings at Burnham. The Scouts have used their own funds for the purchase of grass seed, shrubs and trees. In caring for the lawn and shrubbery around the buildings each summer, the Scouts have made such repairs as were necessary to the fencing.

The fence posts are six inches by six inches by forty-eight inches, made of fir and cut to size in the Burnham Shop Planing mill. They are set in the ground about eighteen inches deep without cement or other foundation material and a small one-quarter-inch link chain strung through a hole near the top of each post links the posts together.

Most of the work on the landscaping by the Boy Scouts is done outside of regular working hours of the shopmen, and particularly on Saturday.

The records in the instant case indicate the following labor was performed by the Boy Scouts and the shop employes in the making and erection of the fence involved:

2 Boy Scouts	6 hrs.
Milling and Machining Posts	3 hrs.
Laborers	1½ hrs.
Painter	½ hr.
Total	11 hrs.

The Bridge and Building forces permanently employed at Burnham for many years—prior to the claimants—never objected to this endeavor on the part of the Boy Scouts. The Carrier holds that since none of its officials has ever ordered or authorized any of this work, there could not exist a violation of the agreement with the Brotherhood of Maintenance of Way Employes. The Carrier also holds the erecting of the fence herein involved including the milling and framing of the posts in the mill at Burnham shops, is not work belonging exclusively to Bridge and Building forces.

The claim must be denied.

All data in support of Carrier's position has been submitted to the Employes and made a part of the particular question in dispute.

The Carrier reserves the right to answer any data not heretofore presented to it.

OPINION OF BOARD: Petitioner contends that the confronting Agreement reserves the work, referred to in the Claim, to Carrier's Bridge and

Building Department employees; and, Carrier violated the Agreement by permitting other than such employees to perform said work.

The Scope Rule is of the broad and general type. Therefore, to prevail, Petitioner has the burden of proving that the work was of a kind that had historically and traditionally been exclusively assigned to and performed by Carrier's Bridge and Building Department employees.

Petitioner, in the record, has failed to satisfy its burden of proof. We will deny the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1963.