

Award No. 11832

Docket No. MW-9608

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted other than B&B employes to construct a wooden platform approximately 9' x 65'; to install a wooden floor approximately 13' x 15'; to construct a work bench 3' x 8'; to construct and attach to wall a number of work benches; to construct thirteen (13) other benches approximately 1' x 10' and to construct four (4) new tables 30" x 8'; all such work performed at Centralia, Illinois during the month of September, 1955.

(2) B&B employes F. A. Goodman, H. R. Parkinson, E. E. Heflin, J. Newcomb, F. E. Ranft, Herbert Kracht and M. E. Bayne each be allowed sixteen (16) hours' pay at their respective straight time rates account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: In September of 1955 the work of constructing a wooden platform approximately 9' x 65' on the west side of No. 1 track at the south end of a wooden floor in a building approximately 13' x 15' in size and the construction and attachment to the wall of a work bench approximately 3' x 8' in said building; the construction and attachment to the wall of a number of work benches in the air brake room; the construction of thirteen other benches approximately 1' x 10' and four new tables 30" x 8' for a locker and wash room at Centralia, Illinois, was assigned to and performed by Car Department employes who hold no seniority rights under the provisions of this Agreement.

The work was of the nature and character that has been historically and traditionally performed by the Carrier's Bridge and Building Department employes.

The employes holding seniority in the Bridge and Building Department were available, fully qualified and could have efficiently performed the work described above.

The Agreement violation was protested and a suitable claim filed in behalf of the Claimants.

in engine houses); locksmiths, joint car inspectors, car inspectors, safety appliance and train car repairs; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work, and all other work generally recognized as Carmen's work."

The work hereinabove referred is of the same type and nature that has been done by Car Department forces at Centralia Car Shops, Illinois, for more than thirty years.

The practice at Centralia Car Shops that has been in effect at all times has been that the Carmen build all work benches, tables, tool boxes, lockers, wooden or steel, benches, etc., and all other work in the Mechanical Department as embraced in the Classification. The cabinet makers are all Carmen and are on the Carmen's seniority roster.

Attached as Carrier's Exhibit No. 5 is an affidavit from Mr. E. A. Williams, a cabinet maker at present employed in the cabinet shops, attesting to the fact that Carmen have always performed this work.

Carrier's Exhibit No. 6 is an affidavit from another cabinet maker, Mr. Earl Jones, offering substantiating proof of the fact that Carmen have always performed this work as far back as 1923 to his knowledge.

Carrier's Exhibit No. 7 is an affidavit from Mr. Homer Lee Hanson, Carman, at Centralia, Illinois, in further support of Carrier's position relating to the work that has been performed over the years and is still the practice.

The Scope Rule of the Maintenance of Way Agreement on this property specifies the employees covered but does not specify the work embraced by the agreement. This dispute is an effort on the part of the Maintenance of Way Organization to acquire the right to perform certain work not delegated by contract; consequently, claim cannot be made to the exclusive right to this work in absence of any agreement either written, oral or implied. The Board has on numerous occasions set forth the basis for determination what work is covered by such a scope rule. See Third Division Award 5840. Nor is there anything in the Scope Rule of the Maintenance of Way Agreement that reserves any of the work involved in this dispute as exclusive to that craft. See Third Division Award 7031. Contrawise, the Carmen's Classification Rule does provide for the work that was performed; consequently, no rules or agreements were violated when this work was performed by Carmen, and in the absence of any basis whatever for this claim of the Maintenance of Way Organization, *supra*, the Board is requested to deny it without qualification.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner contends that the confronting Agreement reserves the work, referred to in the Claim, to Carrier's B and B employees; and, Carrier violated the Agreement by assigning the work and its performance to other than said employees.

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 B & B 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.