

Award No. 12376
Docket No. MW-11334

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**DULUTH, MISSABE AND IRON RANGE
RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement when, during the month of December, 1957, it assigned other than Bridge and Building Department employees to construct two soundproof boxes for telephones.

(2) Cabinet Maker Sever Mattson now be allowed pay at his straight time rate for a number of hours equal to the number of hours consumed by the other employees in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Traditionally, the work of constructing, maintaining and repairing telephone booths and/or boxes for telephones has been assigned to and performed by the Carrier's Maintenance of Way and Structures Department employees in accordance with the Agreement rules and the practices thereunder.

Nonetheless, during the month of December, 1957, the Carrier assigned its Car Department employees, who hold no seniority rights under the provisions of this Agreement, to construct two soundproof boxes for telephones.

The claimant Bridge and Building Department Cabinet Maker was available, fully qualified and could have performed the work assigned to the other employees, had the carrier so desired.

The agreement violation was protested and the instant 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 the dispute dated June 1, 1953, together with supplements, amendments and interpretations thereto is by reference made a part of the question in dispute.

CONCLUSION

In conclusion Carrier asserts that:

1. The rules relied upon by the employees do not support the claim.
2. The work in question is not within the scope of the Maintenance of Way Agreement.
3. The work in dispute, performed in the Maintenance of Equipment Department, was properly assigned to Shop Craft employees.
4. The awards of this Division do not support the claim.
5. There is no rule in the agreement to support the payment of additional time claimed. Claimant was gainfully employed in his usual position and under pay at the time of the alleged violation.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves the fabrication, by Car Department employees, in their cabinet shop, of two receptacles for the purpose of mounting a telephone on the back wall of each, the receptacles thus described to be placed in structures designated by the Carrier.

The Organization contends the Scope Rule of the current agreement, confers upon the B&B Department employees exclusive right to fabricate the receptacles described.

The preponderance of the evidence supports the contention of the Organization that the work of fabricating telephone booths and receptacles such as are described herein has been performed historically and customarily by this Carrier's B&B Department, and we must perforce find the Carrier violated the Agreement.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.

**CARRIER MEMBERS' DISSENT TO AWARD 12376
DOCKET MW-11334**

(Referee O'Gallagher)

The evidence in this record clearly does not support the conclusion that the work involved has historically and customarily been performed by Carrier's B&B Department. Furthermore, Claimant sustained no loss.

We dissent.

G. L. Naylor
W. M. Roberts
R. E. Black
W. F. Euker
R. A. DeRossett