

Award No. 12930
Docket No. MW-12480

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY 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 two (2) carpenters and one (1) foreman employed by the Rommell Construction Company to relocate a door between the ticket office and the telegraph office and to construct a canopy over the overhead door to the freight loading dock at the depot at Lexington, Kentucky, on September 4 and 8, 1959.

(2) B&B Foreman East and B&B Mechanics B. Reynolds and N. J. Minton 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: On September 4, 1959, two carpenters and a foreman employed by the Rommell Construction Company were used to cut an opening for a door between the ticket office and the telegraph office at the combination freight and passenger station at Lexington, Kentucky.

On September 8, 1959, the same two (2) carpenters and foreman were used to refit doors and to construct a canopy over the overhead door to the freight loading dock at the combination freight and passenger station at Lexington, Kentucky.

On both of the aforementioned dates, the claimant employees, together with the entire crew to which they were assigned, were stationed in a camp outfit at Lexington, Kentucky.

The two carpenters and foreman employed by the Rommell Construction Company were taken from a work project at Danville, Kentucky, involving the remodeling of the passenger station at Danville, Kentucky, which is the subject matter of another dispute between these same parties which is being progressed to this Division on this same date.

members thereof were the eye-witnesses who called the attention of the Yardmaster to the situation.

The claim in Award 18923 was denied, with findings, in part:

' . . . This Division has in fifteen previous awards, the latest of which are Awards 16264, 16507 and 18625, denied like claims where claimants were on duty and under pay. The Division will, therefore, without passing upon the merits, dictate a like holding here.'

The same principle was applied in denying the claim in Award 13554, BRT v. K&IT, the same parties as here.

The excerpted portion of the findings from Award 18923 is applicable; the claim is denied without passing upon the merits."

The above referred to awards nullify the claim and demand which the Brotherhood here attempts to assert, even if nothing else did so.

CONCLUSION

The evidence herein presented proves conclusively that:

(a) The claim and demand are barred by the provisions of the agreement in evidence.

(b) The effective Maintenance of Way Agreement was not violated as alleged and does not support the claim and demand here made.

(c) The work contracted was not of the character usually, customarily or traditionally performed by maintenance of way employes.

(d) The point here at issue has heretofore been conceded by the Brotherhood.

(e) Prior Board awards support Carrier's action.

(f) Prior Board awards have denied claims where, as here, claimants were on duty and under pay.

The claim and demand being barred should be dismissed for want of jurisdiction. If, despite this fact, the Board assumes jurisdiction, it cannot do other than make a denial award.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this case is similar and the parties involved are identical to those in Docket MW-12479. The principles discussed in that docket and enunciated in Award No. 12929 are controlling in this case and we accordingly, adopt them.

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 Employes involved in this dispute are respectively Carrier and Employes 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;

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 28th day of September 1964.