

Award No. 13263

Docket No. MW-13644

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE COLORADO AND SOUTHERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when, on May 3, 4 and 5, 1961, it assigned or otherwise permitted Shop Laborers instead of B&B Laborers to perform the excavation work necessary for the subsequent installation of a gas tank by B&B forces at Trinidad, Colorado.

(2) B&B Laborers Thomas Ritz and Willie Paravechio each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man-hours consumed by Shop Laborers in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimants Thomas Ritz and Willie Paravechio have established and hold seniority as laborers within the Bridge and Building Department.

Beginning on May 3, 1961 and continuing through May 5, 1961, shop laborers, who do not hold seniority within the Bridge and Building Department, were assigned to and performed excavation work incidental to the installation of a gas tank at Trinidad, Colorado.

Bridge and Building employees subsequently performed the balance of the work in connection with the aforementioned installation.

Forty (40) hours were consumed by the shop laborers in performing the subject work.

The Agreement in effect between the two parties to this dispute dated December 1, 1955, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Section 1(a) of Rule 1 reads:

"SCOPE

These rules shall govern the hours of service, working conditions,

that the carrier has violated the agreement, so the claim cannot be sustained."

In the circumstances culminating in the aforecited Award, like in the circumstances of the instant case, both groups are covered by the same agreement and there is no rule establishing any line of demarcation of the work under dispute between the groups and, of course, as was said in Award 3145, the Board has no authority to write one. Consequently, under the circumstances of the instant case, with no rule segregating the work between the two groups, it is only fitting and proper that you hold that the Carrier has not violated the Agreement and that the instant claim cannot be sustained.

In Second Division Award 3305, on the Clinchfield Railroad, with Referee James P. Carey, Jr. participating, in a dispute between car yard laborers and stores department laborers over the right to unload heavy material used by carmen, the majority held, in part, as follows:

"Rule 2 of the agreement . . . does not confer exclusive right to the work in question on car yard laborers. The record shows that prior to the time mentioned in this claim, it has been the unchallenged practice to employ others, as well as firemen and oilers, to perform such work. To hold that claimants have the exclusive right to unload storehouse material at the heavy repair shop would, in effect, be adding a provision to the agreement. As the organization properly states in its rebuttal to the carrier's submission, 'this Board has no authority to legislate for the parties by revising the current agreement.' The claim lacks merit. Claim denied."

In the instant circumstances, like in Award 3305, rules of the agreement do not confer exclusive right to the excavation work in question on B&B Laborers. The record shows that prior to May 3, 1961, it has been the unchallenged practice to employ others, as well as Shop and Roundhouse Laborers, to perform such work. To hold that claimant B&B Laborers have the exclusive right to perform pick and shovel excavation work in the Shop and Roundhouse Department area where Shop and Roundhouse Laborers are employed and are, at the time, otherwise unoccupied, would, in effect, be adding a provision to the Agreement. And, of course, such additional provision would prove onerous to the Carrier. Therefore, it is appropriate to again reiterate the inside quotation from the "Findings" in Award 3305 that, "This Board has no authority to legislate for the parties by revising the current agreement." The claim here before you, like the claim in Award 3305, "lacks merit," therefore, should be denied.

In conclusion, it is the sincere opinion of the Carrier that the Petitioner has presented no rule, article of understanding, or precedential practice or authority in support of the claim or his contentions in the premises. He has shown nothing more than that the claim and his allegation that the Agreement was violated are both devoid of merit. Therefore, your Division is respectfully urged to render a denying award.

OPINION OF BOARD: In this dispute, shop laborers, who did not hold seniority within the Bridge and Building Department, performed excavation work necessary for the installation of a gas tank at Trinidad, Colorado—Bridge and Building employes subsequently installed the tank. The Petitioner contends that the Carrier violated the Agreement when it assigned shop laborers to do the excavation work.

The work performed by the shop laborers was an integral part of the

installation of the tank. However, there is no evidence in the record which supports a finding that the installation of the tank is work belonging to the Bridge and Building employees. This Board does not have the right to assume that since the installation of the tank was done by the Bridge and Building Department, the task of installing the tank was work belonging to that Department under the Scope Rule. We have no means of determining from the record if the installation of the tank was reserved by the Scope Rule to any Department. In the absence of any evidence that the installation work belonged to the Bridge and Building Department, we must dismiss the case for lack of proof.

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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1965.