

Award No. 13710

Docket No. MW-13909

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) The Carrier violated the Agreement when, on October 19 and 20, 1961, it assigned or otherwise permitted employes of the Signal Department to perform the work of assembling and erecting a bungalow for 'OG' Cabin.

(2) Foreman Francis Reilly and Carpenters Bert W. Bordinger, Clayton G. Utter and George A. Rumenapp each be allowed twelve (12) hours' pay at their respective straight-time rates because of the violation referred to in Part (1) of this claim".

EMPLOYES' STATEMENT OF FACTS: On October 19 and 20, 1961, employes of the Signal Department consumed forty-eight (48) man hours of work in assembling and erecting a bungalow for "OG" Cabin.

The work of assembling, erecting and maintaining buildings of this type has traditionally and customarily been assigned to and performed by employes holding seniority on the Carpenters' roster.

The claimants were available and fully qualified to have performed the subject work had they been assigned to do so.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The scope rule of the Agreement reads:

"The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employes in any and all sub-departments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employes, except:

1. Employes above the rank of foreman.

Exhibit "A" is a photograph of "OG" Cabin, the bungalow involved in the present dispute, and Exhibit "B" is a photograph of "RA" Cabin, located some 4.7 miles away from "OG", and installed by Signalmen in April of 1961. A close examination of these photographs will reveal that these bungalows are identical in every respect. Both were received from the manufacturer in pre-fabricated form and were assembled, fitted and wired by Signal Department employees and placed upon foundations which had been installed by Signal forces. Each of these bungalows serves an identical purpose as a part of the same "CTC" segment on the same subdivision of this railroad. Of the 87 "CTC" bungalows installed on this property since 1930, all of them basically similar, the present claim is the only claim that has ever been made that the assembly and erection of "CTC" bungalows by Signal Department employees is a violation of the Maintenance of Way Agreement.

Since the facts and practice on this property present irrefutable evidence that neither the disputed work, nor any part thereof, is the "exclusive" work of the claimant organization, it must necessarily follow that the Agreement was not violated when employees of another class were used to perform it. Conversely, it is the position of the Carrier that a violation of the Signalmen's Agreement on this property would have occurred if this work had been given to the claimant organization, based upon the custom and practice on this property since 1930.

It is the position of the Carrier that this claim must be denied for the reason that the claimant organization cannot prove their "exclusive" right to this work and furthermore based upon the practice since 1930 for employees of our Signal Department to make identical installations without claim or protest being lodged by the Maintenance of Way employees.

A similar claim of Maintenance of Way employees on this carrier involving installation of Hot Box Detectors is now pending before the Third Division in Docket No. MW-12229.

(Exhibits not reproduced).

OPINION OF BOARD: On October 19 and 20, 1961 employees of the Signal Department consumed forty-eight (48) man-hours of work in assembling and erecting a bungalow to house certain signal equipment.

It is the contention of Petitioner that Carrier violated the Maintenance of Way Agreement when this character of work was assigned to Signal Department employees.

The Scope Rule of the Agreement is general in nature. Therefore, Petitioner bears the burden of proving that the work involved has been customarily performed by Maintenance of Way employees. Petitioner adduced no evidence in the record which satisfies the burden. Consequently, for lack of such essential evidence we are unable to pass upon the merit of the Claim; and, do not reach other issues raised by the parties. We will dismiss 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 the Claim must be dismissed for lack of evidence to support an essential element.

AWARD

Claim dismissed.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of June 1965.