Award No. 13927
Docket No. MW-14197

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned other than Bridge and Building Department employes to perform the work of installing insulation in the ceiling of the Roundhouse Foreman's office at Conneaut, Ohio and to perform the work of removing three (3) ventilators from the Boiler Shop and the installation of same on the roundhouse at Conneaut, Ohio on October 20, 23 and November 1, 1961.

(2) B&B Foreman B. H. Gee and B&B Carpenters Fred Snyder, Albert Bess, J. M. DiNicola, Gilford Trizna and Kenneth Kuhn each be allowed twenty (20) hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Bridge and Building Department employes have traditionally and historically performed all work in connection with and incidental to the repairing and maintaining of the Carrier's buildings and structures.

On October 20 and 23 and November 1, 1961, Water Service employes, who hold no seniority rights under the provisions of the Carrier's Agreement with the Brotherhood of Maintenance of Way Employes, were assigned to and performed the work of installing insulation in the ceiling of the roundhouse foreman's office, of removing three (3) ventilators from the boiler house roof (including closing up the openings left in the roof as the result of said removal) and of installing these same ventilators on the roundhouse roof (including the cutting and framing of 3 openings in said roof which necessarily preceded the subject installation).

The claimants were available, willing and well qualified to have performed this work, as in the past, had the Carrier so instructed.

that obtaining on the Wheeling and Lake Erie District of this same Carrier, where the contract of the claimant organization includes in its coverage sheet metal workers.

It is the opinion of this Carrier that prosecuting the instant claim represents nothing more than a transparent attempt of the Brotherhood of Maintenance of Way Employes to secure from this Board work which has been contracted to and is customarily performed by employes represented by another organization. This, of course, is a function not vested in this Board.

The claim challenges the right of sheet metal workers to perform the work of placing insulation in conjunction with a heating plant installation and to remove and install sheet metal ventilators and alleges that the assignment of this service to sheet metal workers is a violation of the Maintenance of Way Employes' agreement. In the handling on the property it was made clear that this was the issue and the Employes have clearly identified the third party in these proceedings as sheet metal workers represented by System Federation No. 57. It is plain that this is a jurisdictional dispute involving the right of sheet metal workers to perform the service made subject of claim.

It is therefore the Carrier's position that all employes who might be adversely affected by a sustaining award should be notified of hearing and be permitted to participate therein pursuant to Section 3, First (j), of the Railway Labor Act.

Finally, and without waiving its position that the claim lacks merit, the Carrier wishes to point out that the reparations sought in the claim are purely of a penalty nature, since each of the claimants performed 8 hours' service on the claim dates and were compensated accordingly.

The Carrier has shown that the work forming basis for this claim was performed by the craft to which it rightfully belonged under long established and heretofore accepted custom and practice. It has further shown that no rule of the claimant employes' agreement supports the claim. It should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this case turns on whether the involved work belongs exclusively to Brotherhood. The Scope Rule of the Agreement is general and does not explicitly reserve any work to the Brotherhood. Even taken together with the Seniority rules, as suggested by Brotherhood, it does not, absent evidence of practice, identify the work reserved to Brotherhood under the Agreement. Brotherhood also argues that Rule 52 in its Section (a) classifies the work to be performed by employes coming within the scope of the Agreement, and in its Section (b) makes an exclusive allocation of the kind of work herein involved to Brotherhood employes. Rule 52 reads:

"(a) This rule classifies the work to be performed by employes included within the scope of this agreement and is not intended to cover the work to be performed by employes included within the scope of other agreements with railway labor organizations.

(b) All work of constructing, maintaining, repairing and dismantling buildings, bridges, turntables, water tanks, walks, platforms, highway crossings and other similar structures, built of brick, stone, concrete, wood or steel, and appurtenances thereto, shall be performed by employes in the Bridge and Building Department. . . ."

Carrier argues that the involved work was incidental to, and normally done together with, work guaranteed exclusively to another craft under another agreement with System Federation No. 57, and that, therefore, it is not covered by Rule 52. Brotherhood argues that irrespective of Carrier's obligations under its agreement with System Federation No. 57 Carrier obligated itself to the Brotherhood to have the involved work performed by its members in the Bridge and Building Department. But this suggestion that Carrier may have contracted for the same work with two different labor organizations is in this case clearly negatived by applying to the Brotherhood's contention based on Rule 52 the exception spelled out in Section (a) of that Rule: "This rule . . . is not intended to cover work to be performed by employes included within the scope of other agreements with railway organizations." Under these circumstances, Brotherhood had the burden of proving by evidence of practice, custom or tradition that the involved work had been treated as belonging exclusively to Brotherhood; and, to the extent that Brotherhood relies on the argument based on Rule 52, Brotherhood would also have to prove that the involved work did not belong to employes covered by Carrier's agreement with System Federation No. 57. Such evidence is not in the record. Brotherhood has failed to prove a violation of 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 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; and

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 27th day of October 1965.