

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Arnold Zack, Referee

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PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE TEXAS &amp; PACIFIC RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned other than B & B forces to frame and hang ten (10) doors on a material bin situated by the Car Shop and Coach Shop at Marshall, Texas.

(2) B & B employes Leon Graves, J. A. Crone, R. J. St. Romain and L. D. Williams each be allowed pay at their respective straight time rate for an equal proportionate share of the total number of man hours consumed in the performance of the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On or about October 12, 1960, the Carrier assigned shop forces to perform the work of framing and hanging ten (10) 3' x 6' doors on a material bin located by the Car Shop and Coach Shop at Marshall, Texas. The doors were constructed of 3" car siding or similar material and each door was fitted with three (3) hinges and a hasp.

The work of maintaining and repairing the subject material bin has always been assigned to and performed by B & B forces. The claimants were available and fully qualified to perform this work had they been so assigned by the Carrier.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Out in the Car Casting Yard between the freight car shop and the passenger car shop, at our General Shops at Marshall, Texas, the Stores Department had had for many years some cases or bins, to hold materials which were to be used by the shop forces. On some of such material cases or bins, the fronts were open, and, on others, doors had been applied, to protect the stored materials from weather, and, when padlocked, from pilferage.

These cases or bins, like the other platforms, shelves, bins and cases in

the shop area at Marshall, had been built by Carman carpenters, who had also performed the repair work on them. Mr. Willie Carrell Watson, who was first employed as a Carman Helper on October 5, 1925, had performed most of such work ever since he had been employed by us.

In October of 1960, Mr. Watson, using ordinary wood siding, made ten simple gate-type wooden doors for these material cases or bins, and applied the doors with hinges and hasps, devoting 21 hours to doing so, as a part of his routine work of this nature. The claim in the case was that we should have used the FOUR B & B employes who are named as claimants, instead of Mr. Watson, and that they should each be paid for one-fourth of the time Mr. Watson spent in performing this work.

The claim was appealed, to the Carrier's highest designated officer, by a letter dated May 22, 1961, which is reproduced as Carrier's Exhibit No. 1. The case was discussed in conference on June 20, 1961, and the claim was declined by the letter decision of the Carrier's highest designated officer, on June 23, 1961. That letter decision is reproduced below as the major portion of the position of the Carrier in this case. No reply to that letter was ever received. The next we heard from the Brotherhood in regard to this case was on March 26, 1962, when we received a copy of a letter from Mr. H. C. Crotty, President of the Brotherhood of Maintenance of Way Employees, dated March 22, 1962, and addressed to Mr. S. H. Schulty, Executive Secretary of the Third Division of the National Railroad Adjustment Board, stating that the Brotherhood intended to file an ex parte submission in a dispute over the above-listed claim. Until we received that letter we did not know that the Brotherhood considered that there was a dispute over that claim. The Carrier has no way of knowing when the Board received Mr. Crotty's letter.

(Exhibits not reproduced.)

**OPINION O FBOARD:** On or about October 12, 1960, the Carrier assigned a Carman, a Maintenance of Equipment Department employe, to frame and hang ten doors on a material bin located in the Car Castings Yard at Marshall, Texas.

The Organization filed the instant claim contending that this work should have been done by Bridge and Building Employes, and that those improperly deprived of this work should be compensated for the earnings thus denied them. It argues that maintenance and repair of buildings, such as the material bin involved in this claim, is work customarily assigned to, and performed by, B & B forces and was done on this bin as recently as 1955. It is work clearly within the scope of the Agreement and may not be assigned to employes outside that Agreement, the Organization concludes.

The Carrier denies that this work is reserved to the Maintenance of Way Employes. It points out that the Organization had unsuccessfully sought such a specific reservation of this work in earlier negotiations, that Carman carpenters had originally built these bins and done most of the maintenance of them since their construction, and that therefore, there is no grounds for holding this to be reserved work.

The parties cite earlier cases concerning bin construction and/or repair, but because of special agreement provisions there involved, and the paucity of evidence as to size and location, they can not be construed as controlling in this case.

Here the essential question is whether this bin repair work " \* \* \* clearly locates itself as belonging to the Maintenance of Way and Structures Department," as that phrase is used in Article 1 of the parties' Agreement. Is it work which is historically and customarily performed by employees of that group?

The record shows that these bins had been built by Carmen carpenters who had also repaired them from time to time; that B & B employees worked on them in 1955, (apparently giving rise to a protest by the Carmen who felt this was properly the latter's work); and that there is no evidence of this work having been done at any other times on this property by B & B employees. Accordingly, we must conclude from the fact that both B & B employees and Carmen worked on these bins, that the B & B employees had neither exclusively performed, nor exclusively claimed, the work over the past year (Award 5120). Thus the Organization has not met its burden of showing the right of its B & B employees to the bin repair work here in dispute.

**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 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 16th day of June 1966.