

Award No. 14627

Docket No. MW-13957

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE BALTIMORE AND OHIO 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 B&B forces to install hand railing on the new Fort Avenue Bridge (Baltimore, Md.) on November 28, 29 and December 8, 1960.

(2) Carpenter Raymond K. Rollins and Carpenter Helper Russell D. Rollins each be allowed twenty-four (24) hours' pay at their respective straight-time rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The factual situation involved in this case was clearly described as follows by the Carrier's highest appellate officer in a letter dated March 13, 1961:

"The facts in this case are that at the insistence of the City of Baltimore the Company in 1960 undertook reconstruction with its own forces of the Fort Avenue bridge which carries that street above our tracks at the throat of Locust Point yard. Plans for this bridge called for 4 inch and 2 7/8 inch outside diameter aluminum hand railing to be attached to the concrete work by aluminum castings. In the process of pouring the concrete, B&B forces set four bolts for each casting at the appropriate locations and after the concrete had hardened, a carpenter and his helper were used to install the castings at the bolts and tighten the nuts. After this was completed, a pipe-fitter and his helper on November 28 and 29 and December 8, 1960 installed the aluminum pipe for the hand rail by sliding it into the casting and tightening a set screw with a screwdriver. This pipe had been pre-cut to size by the manufacturer so that generally no cutting was necessary on the job, although in one instance an error had been made in the location of the casting so that it was necessary to cut the tubing on one span and splice the tubing on the next span."

After this was completed, a pipefitter and his helper covered by the Sheet Metal Workers' Special Rules installed the aluminum pipe for the hand rail by sliding it into the casting and tightening a set screw with a screwdriver. This work was done on November 28, 29, 1960 and on December 8, 1960.

The pipe in question had been pre-cut to size by the manufacturer so that generally no cutting was necessary on the job; however, in one instance an error had been made in the location of the casting so that it was necessary to cut the tubing on one span and splice the tubing on the next span.

In the Baltimore Terminal area, it has always been the practice for pipefitters (sheet metal workers) to install pipe hand railing on or in structures.

In handling this case on the property of this Carrier, the BMW Committee was unable to cite this Carrier to any rule appearing in its Agreement that would give work of this kind by some exclusive reservation to employees coming under the scope of the Agreement between this Carrier and the Brotherhood of Maintenance of Way Employees.

OPINION OF BOARD: This claim arose out of the installation of a hand railing on the new Fort Avenue Bridge in Baltimore, Maryland on November 28, 29 and December 8, 1960.

The Organization objects to the performance of a pipefitter and his helper (Sheet Metal Workers) being permitted to install aluminum pipe for the hand railing by sliding it into the casting and tightening a set screw with a screwdriver. B&B forces had previously set four bolts for each casting at the appropriate locations, and after the concrete had hardened, a carpenter and his helper installed castings at the bolts and tightened the nuts.

The Organization contends that the work performed by the Pipefitters should have been performed by B&B forces; that the Carrier violated the terms of the Agreement because it failed to show that the work came within the purview of the exceptions set out in Scope Rule (b) 6 and its subdivisions thereunder; that the hand railing was not used as piping as such; that the work performed by the pipefitters in this instance was work performed on an integral part of a bridge; and, therefore, should have been performed by B&B forces.

The Carrier's question in regard to jurisdiction is without merit due to the fact that the record contains a letter from the Sheet Metal Workers International Association, in which letter the said Organization's General Vice President, J. W. O'Brien, acknowledged receipt of notice of the pendency of the dispute and disclaimed any interest in the proceeding.

A close scrutiny of the Scope Rule of the Agreement discloses that said rule does not reserve exclusively to B&B forces the specific type of work in dispute herein.

Therefore, the burden is on the Organization to prove that the work involved herein has been historically, customarily, and exclusively performed by B&B forces. Award No. 13827.

The Organization has failed to sustain said burden and, therefore, said claim will be denied.

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 30th day of June, 1966.