

Award No. 14629

Docket No. MW-15335

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Paul C. Dugan, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
MONON RAILROAD**

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

(1) The Carrier violated the Agreement when, on January 25 and 26, 1964, it assigned B&B painter forces instead of B&B carpenter forces to sand and lay tile floor in the Salem Street Office. (Carrier's File MW-2-52)

(2) B&B Foreman Chester Goen and B&B Carpenter L. R. Bledsaw each be allowed twenty (20) hours' pay at his respective time and one-half rate because of the violation referred to in Part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** The claimants were regularly assigned to their respective positions with a B&B carpenter gang, with a work week extending from Monday through Friday (rest days were Saturday and Sunday).

The painter foreman and the involved painter were regularly assigned as such with a B&B paint gang, with a work week also extending from Monday through Friday (rest days were Saturday and Sunday).

On Saturday, January 25 and Sunday, January 26, 1964 (rest days), the Carrier assigned a B&B painter foreman and B&B painter to perform the work of sanding a floor and installing tile flooring in the Salem Street Office. Each of these employees consumed a total of twenty (20) hours in the performance of said work, for which they were compensated at overtime rates.

The work is of the nature and character usually and traditionally assigned to and performed by the Carrier's B&B carpenter forces.

The claimants were available, willing and qualified to perform the subject overtime work, but were not called or notified to do so.

The Agreement in effect between the two parties to this dispute dated December 1, 1952, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

**CARRIER'S STATEMENT OF FACTS:** Carrier decided to lay new asphalt tile floors over the existing linoleum floors in some of the offices in the Lafayette, Indiana, Salem Street office building. These floors were not all laid at once, but one office now and then, as convenient.

The first two of these offices so laid were the Dispatchers' office room and the mail room. Members of the Bridge and Building Carpenter gangs were used to lay these floors. Shortly after these two floors were laid they developed large cracks between the tiles, and some of the tiles broke in two. It was learned these failures in the floors were the result of improper installation and poor workmanship.

Carrier had employees in the Bridge and Building Painter force who had tile laying experience, and were qualified to properly lay these floors. Accordingly, in order to insure proper installation and guard against further failure of the floors, these members of the Bridge and Building Painter force were used to lay the tiles in the other office rooms.

Both Carpenter forces and Painter forces are in the Bridge and Building Seniority District.

**OPINION OF BOARD:** The main issue to be determined in this claim is whether the Agreement required the Carrier to assign B&B carpenter forces to the work of "laying tile flooring" rather than to B&B painter forces.

The facts were that on Saturday and Sunday, January 25 and 26, 1964 (rest days), a B&B painter foreman and a B&B painter sanded and installed tile flooring in the Salem Street Office at Lafayette, Indiana.

It is the Organization's position that the work of "laying tile flooring" is of the nature and character usually and traditionally assigned and performed by B&B carpenter forces, and that when the Carrier assigned said work to the B&B painter forces, it violated Rule 4 pertaining to Seniority Limits, and, in particular, to Bridge and Building Subdivision thereof, which reads as follows:

"Seniority rights of all employees are confined to the subdivision in which employed.

The subdivisions are as follows:

1. Bridge and building subdivision.
2. Track subdivision.

#### Bridge and Building Subdivision

##### Group 1.

- (a) Bridge and Building Foremen
- (b) Assistant Bridge and Building Foremen
- (c) Carpenters
- (d) Carpenter Helpers

Group 2.

(a) Painter Foremen

(b) Painters

\* \* \* \* \*

The Organization claims that because of Rule 15, titled "Seniority Rosters", the involved two Groups of employees within the Bridge and Building Subdivision hold separate seniority, and are not of one collective class within the whole of the Bridge and Building Subdivision and, therefore, the seniority rights of the Claimants were violated in this instance.

In further support of its Claim, the Organization cites Rule 27 (d) in regard to overtime as being violated. Rule 27 (d) reads as follows:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The Carrier's main contention is that the agreement does not grant to the B&B carpenter forces the exclusive right to do this work and that there is no evidence of past practice exclusively giving the work in question to B&B carpenter forces.

The Organization has cited numerous cases setting out the principle that in the absence of rules in agreements clearly to the contrary, seniority rosters by districts or by groups prevent the Carrier from turning the work of employees holding seniority on one District and/or Group Seniority Roster over to those holding seniority on another District or Group Roster, even though employees are covered by the same agreement.

The facts in the awards cited by the Organization containing said principle, however, clearly showed that either the work exclusively belonged to the party or parties claiming such work or was work regularly assigned to them as such.

Nowhere does the record in this instant case speak of B&B carpenters being exclusively assigned to this type of work or that the work was regularly assigned to them as such. The record does reflect that on one occasion the Claimants did perform the work in question. However, we feel that this is not sufficient to show that either the work had been regularly or exclusively assigned to Petitioners herein, as this Board has in the past found necessary in order for the Petitioners to establish their claim herein.

It is the opinion of this Board that the Petitioners have failed to meet the necessary burden of proving that the Carrier violated the agreement and the claim will be denied.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

Claim denied.

AWARD

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.