

Award No. 18376

Docket No. MW-18618

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned the work of painting the station at Maringouin, Louisiana, to outside forces in April 1968. (System file K-310-52).

(2) B&B employes D. Devillier, W. B. Barnes, L. D. Williams and Thad Kerry be allowed pay at their respective straight time rates of pay for an equal proportionate share of the total number of man hours expended by outside forces in performing the work referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: During April, 1968, the Carrier assigned the work of painting the station at Maringouin, Louisiana to forces outside the scope of its agreement with its Maintenance of Way employes.

The claimants, all of whom hold seniority within the Bridge and Building Sub-department and who are regularly assigned to B&B Gang 304, have customarily and traditionally been assigned to perform work of this character. During the period involved here, they were assigned to bridge repair work, painting and other deferrable routine maintenance work. They were available, willing and were fully qualified to have performed this painting work if the Carrier had so desired.

The Carrier's action in assigning the performance of this work to outside forces, who have no seniority whatsoever under the scope of this Agreement, was in violation of the scope and seniority rules which, insofar as they are pertinent hereto, read:

"SCOPE

These rules govern the hours of service and working conditions of all employes herein named in the Maintenance of Way Department and sub-departments thereof (not including supervisory forces above the rank of foreman) as follows:

on duty and under pay and suffered no loss of earnings during the claim period. Therefore, any monetary claim is without support.

In view of the foregoing, claim is without merit or rule support and is respectfully declined.

Yours truly,

(s) O. B. Sayers"

OPINION OF BOARD: The Organization is contending herein that Carrier violated the Scope Rule of the Agreement when it permitted outside forces to paint the exterior of Carrier's station at Maringouin, Louisiana.

The Organization's position is that Carrier accepted the Scope Rule within the Agreement the Missouri Pacific Railroad has with the Organization without expressing any interest or desire to exclude the previous interpretations placed thereon and accepted the interpretations this Board has previously placed thereon; that the Carrier recognized that the Scope Rule encompasses work of the character involved herein; that the work in question could have been readily deferred and thus the work could have been programmed; that the assignment of the Claimants to paint the T-P Hotel at Addis clearly reflects Carrier's recognition that the work of painting its buildings, bridges, etc. is work of a character that is within the Scope of the Maintenance of Way Agreement.

Carrier's defenses to this claim are that: (a) the Scope of the Maintenance of Way Agreement is of a general character and does not specify work that is covered herein; (b) there has been an established practice in the property of contracting such work to outside contractors; (c) B & B employees were busy on bridge maintenance programs from which they could not be excused; and (d) none of the claimants suffered any wage loss.

The Board, with this referee sitting, in Award No. 17538, involving the same parties herein, concluded:

"Examination of the Scope Rule herein shows that it is a general Scope Rule, and this Board, in a long line of awards, has therefore consistently held that the burden is upon the Petitioners herein to prove that the work in question has been exclusively performed by B & B Department employees, system wide, by practice, custom and tradition."

See also Awards No. 10585, 14362, 16459, 16460 and 17711, all involving the same parties herein.

Having failed to meet its burden in this instance, we are compelled to deny the Organization's claim in this instance.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1971.