Award No. 18500
Docket No. MW-18923

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned ore dock employes instead of B&B employes to perform the work of repairing ore dock pocket doors at Two Harbors, Minnesota. (System File F-69.)

(2) B&B employes F. L. Costley, N. J. Benjum, L. W. Henrickson and C. H. Moe each 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 ore dock employes in the performance of the work referred to within Part (1) of this claim.

(3) The Carrier shall also pay the claimants six (6%) percent interest per annum on the monetary allowances accruing from the initial claim date until paid.

EMPLOYES' STATEMENT OF FACTS: The Carrier owns and operates ore docks at Two Harbors, Minnesota whereat iron ore is transferred from railroad cars to ships and/or stored prior to loading for shipment. When the Carrier began using these facilities for storing and shipping taconite iron ore pellets, it became necessary to repair the pocket doors in order to contain the pellets which are the approximate shape and size of small marbles. To this end, the Carrier's Engineering Department designed a method of sealing the pocket doors by attaching cardboard thereto. The Carrier arranged for the cardboard to be prefabricated to its own specifications with creases to permit folding in precisely the correct places so that it would properly fit the pocket doors. The Engineering Department also provided blueprints showing the proper manner in which it was to be applied. Prior to shipping iron ore pellets, B&B forces had traditionally been assigned to all necessary repair work on the pocket doors and customarily sealed them by installing rubber belting and other similar materials thereon.

The aforedescribed work of repairing the pocket doors, assigned to and performed by ore dock employes in this instance, is contractually reserved to B&B forces by Rule 29 which, insofar as it is pertinent hereto, reads:

laneous mechanics' work, shall be classified as a bridge and building carpenter and/or repairman."

The claimants, with the exception of C. H. Moe, were at work on regular assignments in the Bridge and Building Department during the period when the work, which is the subject of this dispute, was performed; claimant Moe was off duty due to a personal injury.

A copy of the correspondence involved in the handling of the claim on the property is attached and marked as Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts giving rise to this claim are uncontroverted. In order to contain iron ore pellets, Carrier assigned ore dock employes, not covered by the Maintenance of Way Agreement, to perform the work of sealing pocket doors with cardboard specifically designed by Carrier to fit between the pocket doors.

Petitioner contends that this constituted repair work reserved to it under Rule 29(c) and when Carrier assigned it to other than Maintenance of Way employes it violated the applicable Agreement between the parties.

Carrier counters by claiming that this work was not repair work but is a stopgap procedure; that this work has never been exclusively performed by Maintenance of Way employes; neither the Scope nor the Classification of Work Rule (29(c)) confers exclusivity to Maintenance of Way employes; the request for 6% interest is frivolous and unjustified.

The issue before us is whether the work in question was repair work which should have been assigned to B&B employes? We hold that it was such work.

The cardboard used by the ore dock employes was specifically designed by Carrier to properly fit the pocket doors. It was designed to cover the entire sealing of the door, not merely to fill gaps in the door. It was intended to be a temporary means of containing the pellets, pending permanent repairs to the doors.

This method is readily distinguishable from the placing of rags, hay, etc. into the pockets, which Petitioner concedes had previously been performed by ore dock employes. That was definitely a stop gap measure while the work in question was a temporary repair to the doors. The use of prefabricated cardboard to contain pellets was used for the first time in this instance, and consequently we cannot rely on past practice to shed light on the issue of who traditionally is assigned this work. However, prior to shipping iron ore pellets, B&B forces had traditionally been assigned to all necessary repair work on the pocket doors. Carrier does not deny that repair work within the purview of Rule 29(c) was reserved to Claimants. Since we have found that the installation of cardboard to contain iron ore pellets is, in fact, repair work it is reserved to Claimants. Nor does the fact that the work in question constituted temporary repairs alter the outcome. Rule 29(c) fails to make a distinction between permanent and temporary repairs and this Board is without authority to add to the Agreement something not contained therein.

As to the Claimants being employed full time, the Board has held in numerous recent awards that where there is a loss of earnings opportunity, such as here involved, the employes should be compensated at the straight time rate. Awards 17319, 16430, 16521, among others.

Carrier failed to raise the issue of the non-availability of Claimant C. H. Moe during the handling of the claim on the property and under well established principles of this Board, we are barred from consideration of the issue.

The case at bar is factually distinguishable from the awards allowing claimants interest and consequently we feel constrained to deny Claimants interest at 6% per annum.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1971.

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