

Award No. 18852
Docket No. MW-16979

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, on October 8, 9, 12, 13, 14 and 15, 1965, it assigned other than Bridge and Building Department employees to

(a) paint the interior of the engine house office, toilet and locker building and to

(b) excavate for and repair steam pipes between engine house and engine house office and locker room building at Channing, Michigan. (Carrier's Case D-1551)

(2) B&B Foreman H. E. Schrab and B&B Carpenter W. L. Meyer each be allowed forty-five (45) hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: During the period from October 8 through October 13, 1965, the Carrier assigned or otherwise permitted Locomotive Department employees at Channing, Michigan to paint the interior of the engine house office, toilet and locker building at that location. The area painted was 250 square yards. The Locomotive Department employees consumed a total of 62 man hours in the performance of this work.

On October 13 and 14, 1965, the Carrier assigned or otherwise permitted Locomotive Department employees at Channing, Michigan to excavate for and to repair steam pipes between the engine house and engine house office and the locker room building. The Locomotive Department consumed a total of 28 man hours in the performance of this work.

The aforesaid work is of the nature and character that has been customarily and traditionally assigned to and performed by the Carrier's Bridge and Building Sub-department employees.

The claimants, who had previously performed similar and identical work at this and other locations, were available, qualified and could have efficiently and expediently performed the subject work, had the Carrier so desired.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

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.

CARRIER'S STATEMENT OF FACTS: The instant claim, for reasons that will be fully explained in "Carrier's Position," has not been properly handled by the Organization in accordance with the provisions of Article V of the Agreement of August 21, 1954, Section 3 First (i) of the Railway Labor Act and/or Circular No. 1 of the Board, therefore, the instant claim is barred.

The work with which we are here concerned is not exclusively reserved to employes within the scope and application of the Maintenance of Way Agreement either by schedule rule or past practice, therefore, there occurred no violation of the Maintenance of Way Agreement when the work here involved was performed by Shop Craft employes.

Claimants Schrab and Meyer were both fully employed and under pay on each of the dates of the instant claim, therefore, there were no lost earnings on their part.

The only rule cited by the employes during the handling of the instant claim on the property was Rule 46—Classification and said rule is in no way applicable in the instant case nor does it in any way support either the employes contentions and/or claim.

There is attached hereto as Carrier's Exhibit "A" copy of letter written by Mr. S. W. Amour, Vice President—Labor Relations, to Mr. L. E. Joslin, General Chairman, under date of May 3, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants, B&B Foreman H. E. Schrab and B&B Carpenter W. L. Meyer, allege that Carrier violated the Agreement when, between October 8 through 15, 1965, it assigned employes of Carrier's Locomotive Department at Channing, Michigan to: (1) paint the exterior of the engine house office, toilet, and locker building; (2) excavate for and (3) repair steam pipes between engine house and engine house office and locker room building at that location. Claimants request each be allowed forty-five (45) hours at their respective straight time rates account loss of work opportunity to their craft.

Sheet Metal Workers International Association were served a Third Party Notice by the Division to which they responded with letter disclaiming right to involved work. The requirements of the law, as mandated by the United States Supreme Court in TCE Union v Union Pacific Railroad Company, 385 U.S. 157, have been met.

Carrier and Organization have each raised procedural questions as to the handling of the claim; we find that said procedural questions raised to be without merit and the requests of the Parties are dismissed.

Concerning the merits, the claims are separable and will be so discussed.

(1) Paint the interior of the engine house office, toilet and locker building. The record contains ample probative evidence that painting of Carrier's facilities has heretofore been embraced within the Scope of the Maintenance of Way Agreement on this property. Over a period of years, when such work has been performed by other crafts, as in the instant dispute, protests and claims have been filed and Carrier has given written assurance that such work was work of Carrier's B&B forces and compensated Claimants for the diversion of said painting work. We will sustain that part of the claim in the amount of thirty-one (31) hours each to Claimants Schrab and Meyer at their respective straight time rates.

(2) Excavate for repairs to steam line between engine house and engine house office and locker room building. Organization has alleged that Shop employes worked eight (8) hours on October 13 and 14, 1965 excavating for repairs to steam pipes. Carrier has denied that said work was performed on those dates. Claimants have not shown, with evidence of probative value, that it did in fact occur. Therefore, this part of the claim must be dismissed.

(3) Repairs to steam pipes between engine house and engine house office and locker room building. Organization requested permission to eliminate from the claim that work involved in repairing steam pipes as set forth in Statement of Claim and reduced monetary claim by six (6) hours for each Claimant. The question has, therefore, become moot and that question is dismissed from our consideration.

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

Carrier violated the Agreement as set forth in Opinion of Board.

AWARD

Claimants Schrab and Meyer each be compensated a total of thirty-one (31) hours at their respective straight time rates for violation as set forth in Opinion. The claim is dismissed in all other respects.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1971.

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