

 Award No. 19189
Docket No. MW-17429

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
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 Electricians to perform the work of removing and installing storage racks and shelves at Du Bois, Pennsylvania between July 6 and July 21, 1965. (System Case No. 311.)

(2) B&B Mechanics Clyde Kweder, W. A. Tankalavage, Richard Foley and Dean Connelly each be allowed twenty-one and one-half (21½) hours' pay at their pro rata rate of pay because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier assigned four electricians, who have no seniority within the Maintenance of Way and Structures Department, to perform the work of removing storage racks and shelves from their headquarters at Du Bois, Pennsylvania, and to replace same with a new storage rack. The new storage rack which they permanently fastened to the wall, was approximately 30 feet long and 63½ inches high. It contained 32 shelves approximately 44 inches wide and 18 inches deep which were placed 15 inches apart. The aforementioned work was performed during the period between July 6 and July 21, 1965.

The claimants, all of whom have established seniority as B&B mechanics and are regularly assigned as such, were available and would have willingly performed this work if they had been given the opportunity to do so.

The time limits within which to institute proceedings to this Board on this case were extended by agreement confirmed in a letter reading:

"April 3, 1967

Mr. W. E. Lyons, General Chairman
Brotherhood of Maintenance of Way Employees
703 United Building, Akron, Ohio 44308

Dear Sir:

This acknowledges your further letter of March 21, 1967, requesting an extension of time within which to submit the item identified as

No. 205 (Case No. 311) to the Third Division, N.R.A.B., in the event you so desire.

Since there is no continuing claim aspect in Case 205 (311), this is to advise I am agreeable to considering the nine-month period for handling same before Division Three as commencing with the date of your letter of March 21.

Very truly yours,

/s/ H. F. Wyatt, Jr."

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: There is on file with the Third Division, National Railroad Adjustment Board, copy of Agreement effective April 1, 1951, between this Carrier and The Brotherhood of Maintenance of Way Employees. That Agreement, so far as it may be applicable, is made a part of the record in this case by reference.

At Du Bois, Pennsylvania Carrier had a building approximately 27 feet by 50 feet in size which housed the boiler room for the roundhouse. In July, 1965, one-half of this building was assigned to the Electrical Road Force for use as its headquarters, to perform bench work and for storage of tools and material.

During the period July 6 to July 21, 1965, the Maintenance of Way B&B Force at Du Bois was instructed to and did cut out and remove all the old piping from that portion of the building assigned to the Electrical Road Force, and also removed the concrete blocks which had been used as the support for the boilers.

The B&B Force then installed a partition, framed the ceiling and covered both the partition and the ceiling with $\frac{1}{4}$ inch plywood, thereby forming a room 12 feet high, $13\frac{1}{2}$ feet wide and 50 feet long.

Contiguous with the work of partitioning the room, framing the ceiling and installing the plywood, the B&B Force also upgraded the windows, painted the floor and walls, and built and installed what constitutes two sets of wooden shelves in this room. One set of the wooden shelves is 18 inches deep, 48 feet long and 6 feet high, consists of 5 individual shelves which were nailed to the partition studding. The other set of wooden shelves is 24 inches deep, $13\frac{1}{2}$ feet long and 6 feet high, consists of 5 individual shelves which are fastened to the brick wall of the building by means of masonry anchors. The brick wall, of course, is the wall of the original building.

Each of these two sets of wooden shelves was installed by the B&B Force in such manner that they occupy the wall space from the ceiling down to a point six feet from the floor. In other words, the lowest of the wooden shelves is six feet from the floor.

When the space was assigned to the Electrical Road Force, employees on that force were used to remove certain wooden shelves from the area. These shelves were on the order of an open cabinet which rested on a portable-type table. The table and shelves were carried outside the building and scrapped.

The employees on the Electrical Road Force secured a material rack that had been discarded by the Stores Department. This rack was constructed of angle iron with sheet metal shelves, all welded. These employees cut this rack in half lengthwise and carried the two halves into the room, put them together, end to end, thus forming a metal storage rack 18 inches deep, 48 feet long and 5 feet 4 inches high, with 4 shelves. After assembling this rack, it was moved back against the wall underneath one set of the wooden shelves. In order to stabilize the rack on the rough floor, several shims were placed under parts of the rack and it was tacked to the wall by use of 22 16-penny nails. It is a portable rack.

Copy of pencil sketch entitled "DuBois, Pa. Electric Shop" showing the room in question, the location of the wooden shelves and the metal storage rack is attached as Carrier's Exhibit A.

There was one electrician, one apprentice electrician and one assistant electrical foreman on the job during the period July 6 to July 21, 1965, for a total of 22 hours.

Attached as Carrier's Exhibit B is copy of the General Chairman's letter of September 21, 1965, appealing this claim.

The claim was declined by the Carrier on November 12, 1965. There is no dispute insofar as Time Limit Rule is concerned.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier, during the period July 6 and July 21, 1965 assigned an assistant electrical foreman, an electrician and an electrician's apprentice to the job of dismantling wooden shelves, originally installed by B & B forces, and installing a metal storage rack in a building at Du Bois, Pa. A portion of the building had been assigned to the Electrical Road force for use as its headquarters and for bench work. The metal storage rack was to be used for storage of tools and materials. The rack was obtained from the Stores Department which had discarded it. The employees assigned cut the rack lengthwise and carried it to the room and put the halves together end to end. The rack involved was 48 feet long, 18 inches deep, 5 feet 4 inches high and had 4 shelves. It was placed directly underneath another set of wooden shelves which were hung on the wall six feet from the floor. These wooden shelves had been fabricated and installed by B & B forces.

Carrier contends, among other things, that the fabricating of the metal rack, the dismantling of the wooden shelves and the installation of the metal storage rack or storage shelves by a class other than Claimants did not involve construction of a railroad structure nor maintenance of a railroad structure and is therefore not covered by the Scope Rule. Carrier also contends that the shelving which was attached to the wall with twenty-two (22) sixteen (16) penny nails and stabilized on the rough floor by several shims was not part of the structure but was actually equipment. Moreover, Carrier relies on Award 13827 between the same parties where a similar claim was denied. Petitioner relies on its Scope Rule, as well as Award 8093 also between the same parties, which sustained a similar case. Petitioner also relies on Award 12133.

Petitioner further contends that by excluding maintenance work on material bins within storerooms or oil houses the parties included the work when the storage racks are within other than store rooms or oil houses. Rule (b) 6(b) of the Scope rule reads as follows:

"6. The following work when performed by other than B & B forces:

* * * * *

(b) Maintaining and painting material bins and tanks within store rooms or oil houses."

We are persuaded that the storage racks herein are, in effect, storage bins. We find they were constructed. We further find that they are affixed to the building and are a part thereof. The mere fact that the rack may be removed does not make it any less part of the building. We are finally persuaded that Rule (b)(6)(b) has application as it is "a cardinal rule of agreement and contract construction that where an exception is specifically and expressly set forth, no others may be implied." Award 8093.

Accordingly we shall sustain the claim. Noting that there is a dispute as to the amount of reparations recourse will be had to Carrier's records to determine the amount of time spent on the project by Electricians and the Claimants will each receive an equal share of the time spent at their pro rata rate.

The representative of the electricians has been notified of this dispute and has declined to make a submission to this Board. Accordingly, we have discharged our responsibility under TCEU v Union Pacific Railroad Company (385 U.S. 177) and have found that by assigning the work to Electricians Carrier violated Petitioner's agreement.

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 violated.

AWARD

Claim sustained as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1972.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.