

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19291  
Docket Number MW-19409

Thomas L. Hayes, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned other than Bridge and Building forces to perform the work of painting the lunch room and hand rail in the back shop at Burnham, Colorado during January and February, 1970 (System File MW-11-70/D-9-35).

(2) Painter O. K. Crosley be allowed forty eight (48) hours' pay at the painters' straight time rate because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: During January and February 1970, Mechanical Department forces performed work of painting the lunch room and hand rail in the back shop at Burnham, Colorado. B&B Painter made claim for forty-eight (48) hours' pay at painters' straight time rate, the amount of time consumed by mechanical department forces.

Carrier confronts this Board with a procedural question by contending that the "Statement of Claim" presented to the Board is not the claim appealed to Carrier's highest officer. Carrier's contention is based upon the fact that the claim appealed to Carrier's highest officer was only on the issue of default in Carrier handling of claim at the lower level and Carrier argues that the Organization consequently waived consideration of the claim on its merits.

The record discloses that Carrier officer denied the claim on the issue of default and the merit question. Carrier itself joined the issue and cannot now complain that the Organization has reframed the claim as presented to the Board for adjudication.

The record is barren of any evidence, other than a mere assertion by Petitioner which was timely refuted by Carrier, that this particular work was customarily and traditionally performed by Carrier B&B painter. Therefore, we dismiss the instant dispute for lack of proof.

Award Number 19291  
Docket Number MW-19409

Page 2

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 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 Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1972.