

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19306
Docket Number MW-18314

Arthur W. Devine, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Company (Pacific Lines)

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

(1) The Carrier violated the agreement when it assigned mechanical department employees instead of bridge and building sub-department employees to perform B&B work in making repairs to the Passenger Car Wheel Shop at Sacramento, California on and after June 15, 1967. (System file MofW 152-670)

(2) Foreman C. M. Cook, Assistant Foreman I. F. Roberts, Welder L. C. McVey, Lead Carpenters C. N. Libby and D. Dunn each be allowed pay at their respective straight time rates of pay for eight (8) hours each day beginning sixty (60) days retroactive to July 31, 1967 and for each subsequent day thereafter until completion of the project.

OPINION OF BOARD: It is well settled that the only dispute properly referable to the Board is the claim appealed to Carrier's highest appeals officer and that the Board is not empowered to go beyond the issues presented in the formal statement of claim. Awards 17512, 18239, 15523.

In the handling of the dispute on the property the Petitioner contended that the work complained of as having been performed by Mechanical Department employees consisted of:

"....removing overhead track, ceiling beams and ceiling joists, placing bolts and brackets, removing and installing posts which supported the ceiling, working on columns of the building where posts were installed and placing grout around the posts."

The Carrier denied that Mechanical Department employees did any work that could be considered building repair work, and contended that the removal of overhead track apparently referred to the removal of several previously existing monorails, collector trolleys and electric hoists, all Mechanical Department equipment, which had been in use for some years and which had previously been installed by Mechanical Department forces; that the ceiling beams and ceiling joists which were removed were removed by B&B forces, and that no posts were removed that supported the ceiling of the building. The Carrier went on to say that the remainder of the work on the project involved the erection of a new system of craneways, including crane propelling machinery, in the Locomotive and Passenger Car Wheel Shop; that the craneways are self-supporting, are not supported by the building structure, and do not contribute to the support of the building structure; and that the posts, columns, bolts and brackets installed by the Mechanical Department forces were those supporting the craneways only and are not a part of the structural support of the building.

As there was no dispute on the property concerning the installation of the cranes that issue cannot be considered by the Board.

The issue comes down to the question of whether the posts involved became a part of the building, or constituted repairs thereto. In proceedings of this nature the burden of proving all essential elements of its claim rests on the Petitioner, and it is well settled that mere assertions are not proof. The Petitioner has not presented sufficient probative evidence to support a finding that the posts involved became a part of the building or constituted repairs thereto. The claim will be dismissed for lack of proof.

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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E.A. Killum
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1972.