

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19846
Docket Number MW-19404

Thomas L. Hayes, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Kansas City Terminal Railway Company

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

(1) The Carrier violated the Agreement when it used Union Station Maintainers instead of B&B forces to construct an interior wall (partition), ceiling and to install paneling in the Union Station (System File MW 6.70.180).

(2) B&B employees J. L. Stewart, W. T. Husher, M. H. Rahija, A. W. McGhee, J. M. Dickson, J. E. Weis, B. W. Carlson and R. E. Sovern each be allowed pay at their respective straight-time rates for an equal proportionate share of the total number of man hours expended by Union Station Maintainers in performing the work referred to in Part (1) of this claim.

OPINION OF BOARD: The Claimants are assigned to positions within the B&B department and they allege that Carrier violated the Agreement between the parties when it used Union Station Maintainers for certain construction work in Union Station. The claims arose out of the facts hereinafter set forth.

On or about February 1, 1970, the Carrier instructed Union Station Maintainers to perform some work in connection with the Union Station rest room conversion, which work is the subject of this dispute.

On the property, the letters of the Organization to the Carrier referred to the work done as the installing or constructing of interior wall, ceiling and paneling in Union Station. In its submission to the Board, Carrier contends that no work was performed on the ceiling, other than painting, and that no paneling was done. However, this contention was not raised on the property and may not be considered here.

The Organization contends that B&B employees are contractually entitled to the disputed work and in support of its claim calls our attention to the Classification of Work, Rule 2, under Group 5, in the current Maintenance of Way Agreement, which reads:

"Except as may be covered by the Union Station Maintainers' Agreement, the construction, repairing, maintenance or dismantling of buildings or other structures, the erection of fencing, gates, right-of-way monuments and signs, the installation of wood or concrete crossings, walks and platforms shall be classified as Bridge and Building work."

The Board notes that the quoted Rule begins with the word: "Except as may be covered by the Union Station Maintainers' Agreement...." Thus, Rule 2 means that, except as may be covered by the Union Station Maintainers' Agreement, work in connection with construction, repair, maintenance and dismantling of buildings or other structures belongs to the Bridge & Building forces.

We must, then, first determine what work is reserved to the Union Station Maintainers, under their Agreement, and is therefore outside the B&B Classification Rule.

The pertinent portion of Rule 2 of the Union Station Maintainers' Agreement reads in part as follows:

"(b) The maintenance **work** to be performed in buildings consists of:

Light repairs of interior wood work, fixtures and furniture...."

The Organization submits that constructing a partition fifty feet in length and thirty feet high is not "light repairs of interior wood work, fixtures and furniture" and therefore is not covered by the Union Station Maintainers' Agreement. Carrier, on the other hand, contends that the partition is about twenty-two feet high and about twenty-five to thirty feet long. Regardless of which is right on the dimensions of the partition, it is unmistakably clear that "light repairs" are not involved here and that the contested work belongs to the B&B forces by virtue of Rule 2 of their Agreement. It was therefore a rule violation for Carrier to assign the construction work to Union Station Maintainers.

The Board is aware of Carrier's argument that there has been a practice for all remodeling above the track level floor to be performed by Station Maintainers or contracted out with their concurrence. As to this argument, we would point out that the Board has often held that where provisions of an agreement are clearly unambiguous they shall prevail over conflicting practices. Consequently, even if Carrier is right about past practice, we cannot remove work from the scope of the agreement covering B&B employees because their rule is unambiguous.

We note also that Carrier contended the claims were vague and indefinite and that the claimants suffered no loss because they were fully employed every day the Station Maintainers were building the partition.

The Claimants are seeking pay for an equal proportionate share of the man hours used by the Station Maintainers in performing the work beginning on February 1, 1970. The exact number of hours claimed for each Claimant is easily ascertainable upon a review of Carrier's records and the objection of vagueness is not a valid one.

With respect to Carrier's contention that Claimants were "fully employed" when the disputed work was performed and therefore suffered no monetary loss, the Board would make two observations. First, this seems to be a new defense, not raised on the property and not properly before the Board. Second, even if a proper defense, to support it Carrier would be required to show that Claimants could not have performed the contested work during overtime hours or on weekends and this it has failed to do.

In view of the foregoing, the claims of the B&B employees are sustained.

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 Agreement was violated.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauline
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1973.