

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20256
Docket Number MW-20075

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Fort Worth and Denver Railway Company

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

(1) The Carrier violated the Agreement when it assigned and used other than Track Department forces to perform track work at Amarillo, Texas on June 3, 4, 8, 9, 10 and 11, 1971 (System File F-4-21/W-102).

(2) Mr. J. A. Sasuada be allowed twelve (12) hours of pay at his straight time rate and Messrs. R. B. Sain, R. A. Blackwell and E. Navarro each be allowed forty-four (44) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: The Carrier used three station laborers, Class 3 clerical employees to perform work at Amarillo, Texas. They cleaned dirt and trash from between the rails and ties and hauled it away in a company truck; the work extended over a distance of about four blocks, from Pearce to Johnson Street in Amarillo. The MoFW Employees contend that this work should have been assigned to the Claimants who are Laborers within the MoFW Track Department and who are regularly assigned to the section gang headquartered at Amarillo.

The Carrier's defense on the property was that the work was merely station cleanup and that Group 3 clerical employees have performed similar work for years at Amarillo. The Employees unequivocally denied this defense and consistently asserted that the work in question involved "doing track work." In addition, the Employees provided Carrier with a February 16, 1972 letter from the General Chairman of the Clerks' Organization which advised that his Organization did not appeal claims filed on behalf of the three clerical employees who performed the work; in pertinent part this letter states:

"...it is our position that the work the Carrier requested these employees to perform does not come under the Scope of our Agreement and could in no way be considered station work but is without question work coming within the Scope of the Maintenance of Way Agreement."

The Carrier made no denial of the substance of the above letter on the property or in its Submission, but the Carrier's Rebuttal Brief does argue against the probative value of the letter.

On the basis of the foregoing, and the whole record, we conclude that the preponderance of the evidence shows that the disputed work belongs to the MofW Employees. The letter from the Clerks' General Chairman, as previously noted, was not mentioned by the Carrier on the property or in its Submission; and, although the Carrier's rebuttal statement argues against the probative value of the letter, this argument is made when the Employees have no opportunity to answer and, obviously, the argument is not as convincing as it might have been if made earlier in the dispute. We conclude therefore that the evidenciary value of the letter withstands the Carrier's argument. We also note that, although the Carrier asserted that Class 3 clerical employees had performed similar work for years at Amarillo, the Carrier offered no evidence on this point and thus failed to carry its burden to prove an alleged past practice.

With respect to the monetary portion of the claim, the Employees object to consideration of anything other than the full amount of the claim, on the ground that the Carrier interposed no defense to this matter on the property. We agree in part and disagree in part with the Employees' objection. We shall not consider the Carrier's defense that Claimants were not available to perform the work, but we shall consider the propriety of the claim in relationship to the amount of time consumed by the clerical employees in performing the work. Carrier's Submission states that the clerical employees "puttered around with the job off and on for several days, although they kept no exact account of the time consumed, and on no date spent the entire day on the work." Carrier's Rebuttal Statement says that the clerical employees did perform work on June 3 and 4, but not on the other dates of the claim." While this information is contradictory and inadequate to show precisely how many hours were involved in the disputed work, it is nonetheless persuasive that the work did not extend over six full work days as stated in the claim. In view of the nature of the work, and that it extended over a distance of four blocks, we believe that three work days is a reasonable time to allow for the work. Accordingly, we shall sustain the claim for June 3, 4 and 8, 1971.

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;

Award Number 20256
Docket Number MW-20075

Page 3

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

Claim sustained for June 3, 4, and 8, 1971.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1974.