

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20362
Docket Number MW-20366

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis-San Francisco Railway Company

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

(1) The Carrier violated the Agreement when it used Apprentice Carman Theodore Stull and Millman O. K. Samuels (Car Shop) instead of forces from the B&B House Carpenter subdepartment to construct a building to house the time clock and cards at Springfield, Missouri (System File A-9372/D-6860).

(2) B&B Carpenters Thomas Fortner, Jr. and E. O. McCowan each be allowed forty (40) hours of pay at their respective straight time rates (\$4.19858 per hour) because of the aforesaid violation.

OPINION OF BOARD: The dispute herein arose from the assignment of two car Department employees to assemble a small structure which was to be used to house a time clock and cards at Carrier's Springfield, Missouri Shops. Claimants herein were, at the time of this incident in February 1972, Bridge and Building Carpenters under the Maintenance of Way Agreement.

The Organization stated, and the Carrier did not deny, that the construction of new buildings as well and the repair and remodeling of existing buildings has traditionally been performed by Carpenters covered by the Agreement. Petitioner agrees that the Scope Rule does not specifically cover the work in question but argues that a prime purpose of the collective bargaining agreement is to preserve the work of the employees subject to the agreement and such work may not be properly assigned to employees of other crafts.

The prime thrust of Carrier's argument was that the enclosure in question could not be considered either a permanent structure or building. The enclosure was built in the Mill Shop, assembled and then moved by fork lift to the point of use. The enclosure, according to the Carrier, was portable, supported on skids and had no wall studs or rafters. Carrier concluded that the work was not of a type reserved to the Carpenters by either Rule or practice.

The principle issue in dispute is whether the assembly of the structure in question is work which is reserved to employees covered by the Agreement. Since the Scope Rule is not controlling, as admitted by Petitioner, we must examine the past practice. A careful study of the handling of the dispute on the property reveals no evidence whatever adduced by Petitioner with respect to past practice. Further we find that with Carrier's statements on the property concerning the nature of the structure, the Organization presented arguments but no facts to support its contention of past practice: there are no refutations of the position that the structure was not a "building". The burden of proof with respect to the past practice is on the Petitioner, and in this case no supporting facts whatever have been presented.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of August 1974.