

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20710
Docket Number MW-20692

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Terminal Railroad Association of St. Louis

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

(1) The Agreement was violated when a track laborer was used to burn (torch out) concrete reinforcing rods near track joints on October 16, 17, 18, 19, 20, 23, 24 and 25, 1972 (Carrier's File 013-293-16).

(2) Ironworker Sherman Bass be allowed eight hours' pay at the Ironworker's straight-time rate for each of the eight days identified in Part (1).

OPINION OF BOARD: Carrier repaired certain rail joints which required the removal and replacement of angle bars and track bolts. It was necessary to remove certain pavement adjacent to the joints. Steel reinforcing rods were imbedded within the pavement for structural strength. The dispute centers around the fact that a Track Laborer cut the steel rod with a torch, rather than an Ironworker.

Claimant asserts that since the reinforcing rods imbedded in the pavement are incidental to structural strength of the concrete, and not incidental to track work, Carrier violated the Agreement.

Both parties have expanded upon the dispute in their submissions and arguments to this Board, and consistently, each has urged that the other has raised matters which were not advanced and considered on the property. In this regard, we have confined our consideration to documents of record on the property in an effort to frame the issue which is properly before us.

The initial claim asserted that the work in question "...is specified as iron workers work in accordance with the classification rule ..." (underscoring supplied). Thereafter, Claimant reasserted that the work "...is covered under Rule 2 Classification...".

We have studied Rule 2 at length, but we are unable to find that the cutting work is specified in said Rule. Accordingly, in order to find a violation, we would require more than the conclusionary statements referred to above, especially since Carrier denied that the work in question accrued to the Ironworker; and since Claimant asserted no other Rule violation on the property.

The Claimant argues that the "exclusivity" theory is not a factor in this dispute. Even assuming the Organization is correct in that assessment, under this Rule surely some showing that the disputed work is properly performed by the Ironworker should have been raised on the property.

We cannot state that the Organization's contentions do not have a basic appeal; however, we are inclined to dismiss this claim for failure of proof.

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 is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. P. P. P.
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1975.