

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20892
Docket Number MW-20755

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Inc.)

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

(1) The Agreement was violated when a carman and a roundhouse welder were used to construct a new catwalk and guard railing along the north pit of the diesel pit at Clyde, Illinois on February 8, 9, 10 and from February 12 through 16, 1973 (System File 15-3/MW-84 5-21-73).

(2) B&B Foreman C. A. Lawson, B&B Carpenters D. L. Johnston, V. Cavazos, B&B Helper D. Gipson and Truck Driver M. Truan each be allowed 11.2 hours of straight-time pay and 1.6 hours of time and one-half pay.

(3) Welder D. Kline and Welder Helper J. Bradley each be allowed 28 hours of straight-time pay and 19 hours of overtime pay.

The claim contemplates payment at the claimants' respective contractual rates. The hours claimed for each claimant represent an equal proportionate share of the total time consumed by the carman (Part 2) and by the roundhouse welder (Part 3).

OPINION OF BOARD: Carrier had a catwalk and guardrailing approximately 235 feet long built along the north pit of the diesel pit at Clyde, Illinois. The work was performed by carmen and according to the employees it took a total of 158 hours to complete it. The employees base their claim on Rule 55 of the Agreement and say that that Rule clearly places the work within the scope. In denying the claim Carrier stated:

"It has always been the responsibility of the Mechanical Department to manufacture and maintain portable ramps which are used in the Roundhouse of Diesel Repair facilities in connection with repairing and maintaining of locomotives."

It is necessary to look closely at the work performed in this instance to see whether it could be considered the building of a "portable" facility. The very size of the job does not argue well for defining it as portable. In the ordinary understanding of things one would hesitate to describe a structure 235 feet long as portable. It is not necessary to rest heavily on that point, however, because the record clearly shows that the ramp was tied in to the building by welding it to the structural beams and by the use of securement rods. Although this point is not determinative, it would

seem that the ramp met the legal definition of a fixture. Both its purpose and annexation tend to support that view. All of these factors serve to undermine Carrier's chief contention, that is, that what was built was a "portable" ramp and Carrier has not contended that the construction of permanent additions to the building is work which is properly assigned to Carmen.

The Carmen were given notice of the pendency of this dispute and elected not to appear or participate in it.

The Board finds that Rule 55 gives the petitioning organization jurisdiction over the work performed by employees from another organization and that Carrier violated the Agreement by assigning the work to them. Carrier's argument with respect to the propriety of awarding damages in a case of this type has been decided adversely to the position taken by Carrier in this claim a number of times. (See Award No. 19924). The Board will follow the line of decision discussed in that Award and will award damages for the work opportunity lost by Claimants.

The employees presented Carrier with a detailed statement of the number of hours worked by the Carmen. Carrier took issue with the statement furnished by the employees, but it did not present any factual information to support its contradiction of the employees' assertion. Carrier, of course, is the party with the most direct access to the actual records of the work and if it wished to contradict the claim it was under an obligation to place in the record the facts upon which it based its denial. It chose not to do so and the Board is left with a specific claim on the part of the employees and a blanket denial on the part of the Carrier. Under these circumstances the Board will accept the claim made by the employees as factually correct.

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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1975.