

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21479
Docket Number MW-21485

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Denver and Rio Grande Western Railroad Company

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

(1) The Carrier violated the Agreement when it assigned Mechanical Department employees instead of Bridge and Building Department employees to assemble and install lockers in the Enginehouse Locker Room at Pueblo, Colorado on November 16, 17 and 21, 1974 (System File D-6-75/MW-4-75).

(2) The members of B&B Gang No. 6003 each be allowed pay at their respective rates for an equal proportionate share of the total number of hours expended by Mechanical Department employees in performing the work referred to in Part (1) hereof.

OPINION OF BOARD: This dispute concerns the assembling and/or installing of lockers in the Enginehouse Locker Room at Pueblo, Colorado, which is alleged to be the work of Bridge and Building forces. The work in question was performed by machinists who have indicated that the work is not within the scope of their agreement.

Without considering the procedural question raised by Carrier, the issue herein is whether or not the work in question should have been assigned to Claimants. The only reference to the Agreement by Petitioner on the property is the claim that the work is covered by the Scope Rule. The Scope Rule of the applicable Agreement has been before this Board on numerous occasions and has uniformly been termed a general rule (e.g. Awards 15221, 14877, 14638, and 11831). The Board has held that in order to establish rights to particular work under this Agreement and general rule, the Organization must establish by probative evidence that employees covered by the Agreement have in the past performed the disputed work to the exclusion of all others. In this dispute the Organization has offered no evidence whatever to support its contentions. Accordingly, the Claim must be dismissed.

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 Petitioner has failed to meet its burden of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1977.

