

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22428  
Docket Number MW-22323

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(The Baltimore and Ohio Railroad Company

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

(1) The Carrier violated the Agreement when it assigned electricians instead of B&B forces to paint the substation at Cumberland, Maryland on September 6, 1976 (System File CUM-653/2-MG-1680).

(2) Carpenters, R. G. Kerns, W. W. Hott, J. R. Haines, S. R. Durst, R. W. Haines, Jr. and J. Smith each be allowed pay at their respective time and one-half rates for an equal proportionate share of the fifty-four (54) man-hours expended by electricians in performing the work described in Part (1) hereof."

OPINION OF BOARD: Claimants in this case are employed as Carpenters in Carrier's B&B Department. They were available for work when on September 6, 1976, Carrier utilized Electricians to perform certain painting work at the electric sub-station at Cumberland, Maryland. The work consisted of painting the steel structures of the sub-station to which the electric apparatus - insulators, wire, switches, etc., - is attached.

Petitioner has pointed to Rule 1(c) of their Agreement which says:

"(c) Bridge, Building and Structural Work.

"Carpentry, painting, glazing, tinning, roofing, plastering, bricklaying, paving, masonry and concreting required in the construction and maintenance of railroad structures, other than tunnels, shall be performed by the B&B forces. Such work in tunnels and all concreting by the gunite method shall be performed by tunnel forces."

Petitioner has further argued that "this is the first time in fifty or more years that other than Maintenance of Way forces were used to paint this structure."

Carrier has said that since this sub-station was constructed in 1955, the Electrical forces "have painted the steel structure as needed."

The Electrical Workers, who were involved here as an interested third party, have told us that:

"Carrier's Electrical forces has (sic) built and maintained (including painting) electrical sub-stations at least as far back as 1924";

and that:

"The work involved in the instant case is actually the third time the Electricians have completely painted this particular substation."  
(Underscore in original)

The record in this case contains dramatic conflicts in the evidence, allegations and assertions which are presented by the parties to the dispute. It is well established that this Board has no way of resolving conflicts in the factual evidence of any dispute. In Award No. 16152 (Ives) of this Division we find:

"Analysis of the conflicting evidence offered by the parties in support of their respective positions discloses an irreconcilable conflict of facts, and it is well established that the burden of proof rests with the Claimant in such disputes. Awards 15597 and 15765."

That logic is equally applicable here. There simply are not sufficient evidentiary facts in this case to permit a finding that Carrier violated the provisions of Rule 1(c) in this particular instance. Accordingly the claim will 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

Claim dismissed in accordance with Opinion.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Paulre*  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1979.