

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22729
Docket Number MW-22627

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Norfolk and Western Railway Company (Lake Region)

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

(1) The Agreement was violated when, on October 19, 20, 21, November 12, 30 and December 1, 2, 3 and 6, 1976, the Carrier used Bridge and Building Department forces to perform track work at Toledo, Ohio (Section #1) and at Oak Harbor, Ohio (Section #2) [System Files MW-NWK-76-4 and MW-NWK-76-5/.

(2) As a consequence of the aforesaid violation, B. A. Pena, K. A. Sarka, R. Ramirez, V. Ramirez and L. D'Emilio each be allowed an equal proportionate share of one hundred thirty-six (136) hours at their respective straight-time rates and E. Rodriguez, C. R. Clere, N. L. Pullen and D. Bunker each be allowed forty (40) hours of pay at their respective straight-time rates."

OPINION OF BOARD: On claim dates, the Carrier utilized the service of Bridge and Building Employees to perform certain work of shortening switch ties. The Claimants, who are in the Track Department, assert that they should have been assigned to perform the work. They cite the Scope Rule as authority for their position, and assert that the work of a Sub-Department is confined to the employees holding seniority therein.

The Carrier has defended its actions by asserting that the work of cutting off the ends of switch timbers has routinely been performed in the past by employees of the Bridge and Building Department, and it refers to access to necessary tools and skills.

We have reviewed the record at length, and note that although the Company asserts a past practice, they have not presented factual evidence to us to support that allegation. Accordingly, we have no alternative but to sustain the claim, as submitted.

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 agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1980.