

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22901
Docket Number MW-22516

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company
((Pacific Lines)

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

(1) The Agreement was violated when the Carrier assigned or otherwise permitted employees of the Union Pacific Railroad to paint a Southern Pacific building located at 28th Street, Ogden, Utah (System File MofW 148-410).

(2) B&B employees Clyde C. Olson, David C. Stranger, Clarence E. Hickman, Melvin D. Wall and Vern M. Poll each be allowed twenty (20) hours of pay at their respective straight-time rates because of the aforesaid violation."

OPINION OF BOARD: Employees of a foreign carrier expended some 100 man hours and the necessary materials to paint one of Carrier's buildings. The work, of course, accrues to Claimants under their Agreement. Carrier's principal defense to this claim is that the Organization has failed to show that Carrier gave specific authorization to the foreign Carrier to perform the work. In a grievance handling system, with no discovery procedures, or at least minimal ones, it would be a nearly impossible burden to require such proof. Instead, the Organization has relied on the obvious, and an absence of proof by way of defense. This is a sufficient and reasonable approach.

The Organization takes the position that a foreman on the foreign carrier would not take it upon himself to expend 100 hours, and material to paint a building unless he was authorized to do so. Carrier has not come forward with any convincing rebuttal of that proposition. The Board takes note of the fact that carrier has control, direction and responsibility for its property. If by gross mistake someone came forward and volunteered to paint it, one would expect evidence showing that a mistake had been made.

The Board finds on this record that Carrier is responsible for the violation which has occurred and will sustain the claim.

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: AW. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1980.