

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23438
Docket Number MW-23359

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
Board of Trustees of the Galveston Wharves

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

(1) The Carrier violated the Agreement when it assigned pile driver men (laborers) instead of recalling and assigning Mechanics W. Hart, J. Sifuentes, J. Pannell and V. Lawrence to build pallets between October 25, 1977 and December 2, 1977 (System Files 700-4, 700-12, 700-52 and 700-53).

(2) Because of the aforesaid violation, furloughed Mechanics W. Hart, J. Sifuentes, J. Pannell and V. Lawrence each be allowed pay at their respective rates for an equal proportionate share of the total number of man-hours expended by pile driver men in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: Claimants W. Hart, J. Sifuentes, J. Pannell and V. Lawrence are mechanics in the Construction and Maintenance Department and as such, have established and hold seniority there. On October 25 through December 2, 1977, Carrier appointed pile driver men, laborers from the same department, to build cargo pallets.

The Organization contends that Carrier violated the Agreement when it failed to assign Claimants who were furloughed, available and fully qualified to perform this work. The Organization states that none of the assigned men hold seniority as mechanics. Further, it claims that pallet building has customarily and historically been performed by mechanics.

Articles 3 and 4 of the Agreement read as follows:

"ARTICLE 3 - SENIORITY DATUM

Rule 1. Except as otherwise provided in this Article seniority begins at the time employee's pay starts.

Rule 2. Seniority of employes promoted to bulletined positions will date from the day of their assignment on the bulletined positions, except that when an employe so promoted fails to qualify on such bulletined position within thirty (30) calendar days, he will not acquire a seniority date as a result of filling such position.

Rule 3. The dating of an employe on the seniority roster shall determine his relative seniority status. When two or more employes have the same seniority dating in the higher classified

"position, the numerical position on the roster in the lower classified position will govern."

"ARTICLE 4 - CONSIDERATION

Rule 1. Right accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service with the company as hereinafter provided."

The Carrier contends there was no violation of the Agreement. It argues that under the provisions of Article 7, Seniority Rosters, no differentiation is made between pile drivers and mechanics. Carrier also cites Article 32, Rule 5 to support this position. Article 7 reads:

"ARTICLE 7 - SENIORITY ROSTERS

Rule 1. Seniority rosters of employees of each subdepartment will be separately compiled. Copies will be furnished foremen and employees' representatives. Same will be posted at Material Yard bulletin board.

Rule 2. Seniority rosters will show the name, classification, date of entry and seniority of the employees in the order of their seniority."

Article 32, Rule 5 states:

"ARTICLE 32 - CLASSIFICATION OF WORK

Rule 5. Employees assigned to lettering, stenciling, graining, varnishing, operation of power machines of any and all types shall be classed as shop mechanics and/or carpenters."

A central element of this dispute is whether this work belongs to a certain classification of employees. In order for the Organization to prevail, it must meet its burden of showing that the building of cargo pallets has traditionally belonged to mechanics to the exclusion of others. See Award 20071.

The evidence presented by the Carrier clearly demonstrates that the work involved here has ~~not~~ been exclusively performed by mechanics. As such, we are persuaded that mechanics have not customarily and historically performed the disputed work.

The Employees have also failed to establish, through sufficient evidence, that a distinct differential exists, under the terms of the Agreement between mechanics and pile drivers. In fact, Rule 5 of Article 32 specifically provides the definition of mechanics (or carpenters). Since the rule obviously covers

the pile drivers when performing the work in question, they must be viewed as being shop mechanics and/or carpenters. This is the clear import of Rule 5.

Given the absence of proof in the record that the work falls to the mechanic or carpenter class, we must find that the Agreement was not violated. Accordingly, we will deny the claim in its entirety.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.