

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23852
Docket Number MW-23138

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes
{ Seaboard Coast Line Railroad Company

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

(1) The Carrier violated the Agreement when it used Mechanical Department forces instead of Bridge and Building Department forces to construct a dining facility in its car repair building at Uceta Yard, Tampa, Florida (System File C-4(36)-Tampa Division/12-2 (78-19) J).

(2) Because of the aforesaid violation, each Group A B&B employe holding an assignment on the Jacksonville and Tampa Divisions during the claim period be allowed pay at their respective straight-time rates for an equal proportionate share of the total number of man-hours expended by Mechanical Department forces in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: In September 1977, Carrier assigned Mechanical Department Employes to install two screen doors, screen slides and front walls and a roof constructed of plywood sheeting etc. at the Uceta Yard in Tampa, Florida. This work was designed to construct a dining facility.

The Organization claims that this work has traditionally and historically been performed by Carrier's Bridge and Building Subdepartment forces. Therefore, it contends that Carrier's assignment violates the Agreement. It asks for compensation at their respective straight-time rates, for Group A and BB employes assigned to Jacksonville and Tampa.

Rule 1, Scope, states:

"These Rules cover the hours of service, wages and working conditions for all employees of the Maintenance of Way and Structures Department as listed by Subdepartments in Rule 5 -- Seniority Groups and Ranks, and other employees who may subsequently be employed in said Department, represented by Brotherhood of Maintenance of Way Employees.

This Agreement shall not apply to: Supervisory forces above the rank of foremen, clerical employees and Signal and Communication Department employees."

This rule is general in nature. It does not reserve the particular work to the employes covered by the Agreement.

Thus, in order to establish exclusive jurisdiction over the disputed work, the Organization has the burden of showing that such work has traditionally and historically been performed by them. See Award 14507 and 10389. That is, the Employes must prove that there has been a custom and practice of performing such work.

Here, the Organization has failed to shoulder that burden. The evidence shows that Mechanical Department Employes originally constructed the facility in question. They constructed the cage, which was later used as a lunchroom, and made other modifications over the years.

Thus, even if B & B employes did perform some of this work as the Organization claimed, the fact is that the work has never been exclusively B & B work. Instead, at least some of the work was performed by Carmen under Rule 100 of its Agreement.

We will deny the claim in its entirety.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April 1982.

