

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25077

Docket Number MW-24995

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way *Employees*)  
(  
(Southern Pacific Transportation Company (Western Lines))

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

(1) The Carrier violated the Agreement when it assigned Mechanical Department forces instead of Bridge and Building Department forces to construct a wash rack at Roseville, California June 24, 1981 through September 30, 1981 (Carrier's Files MoFW 152-930, 932, 927).

(2) As a consequence of the aforesaid violation, B&B Welders T. A. Freeman and J. Pascuzzi shall each be allowed six hundred fifty-three and one-third (653-1/3) hours of pay at their respective straight-time rates and B&B Welder M. Petty shall be allowed fifty-three and one-third (53-1/2) hours of pay at his straight-time rate."

OPINION OF BOARD: On August 10, 1981, September 8, 1981 and November 6, 1981 the Organization filed pay claims which cumulatively ran from June 24, 1981 through September 30, 1981 for Claimants J. Pascuzzi and T. A. Freeman. The claim dated November 6, 1981 also sought relief for Claimant M. Petty. The claims, which were disallowed by the Carrier on the first instance, and on appeal, alleged violation of the provisions of the current Agreement when the Carrier assigned Mechanical Department employees to perform work "... of the nature which is customarily, historically and traditionally performed by Bridge and Building Sub-Department employees on a system-wide basis". The work in question consisted in the design, cutting and assembling of a wash rack for servicing and cleaning locomotive diesel units at the east end of the Carrier's Diesel Shops at Roseville, California.

It is an established precedent that the burden of proving a claim according to the standards of substantial evidence acceptable to the National Railroad Adjustment Board lies with the moving party. A review of the record shows that the pertinent Rules of the Agreement between the Organization which is party to this claim and the Carrier provide possible jurisdiction over the work in question. But the record also shows that Rule 62 of the Agreement between the Carrier and the Boilermakers appears to reasonably provide jurisdiction to those employees over the work at bar. The Board can find, therefore, no support in the record on the basis of contract to permit a conclusion with respect to the Claimants' exclusive right over the work.

In terms of past practice it does appear to be true, from the record, that the building of wash racks at the Carrier's Roseville, California facility had been the exclusive purview of the B&B forces in the past and that this was the first time that the Mechanical Forces at that point in the system had built such a structure. This is attested to by documents signed by employees working under both Agreements and this is not denied by the Carrier. The intent of the claim goes to the issue of system-wide application of the B & B Agreement. The record, however, shows that the Carrier had similar "wash racks and/or scaffolds

... built by ... Mechanical Department employees ... at both Eugene, Oregon and Ogden, Utah ...". Verification of this is contained in the record under the signature of the Plant Manager at Eugene Oregon. In the case of the Eugene, Oregon structure, which was built approximately a year before the claims relative to the instant case were filed, the B & B forces assisted by mounting the structure to an existing cement walkway floor, but the Mechanical Department employees built the structure. The Board cannot, therefore, find sufficient evidence of probative value in the record to warrant conclusion that the work in question is reserved, in terms of system-wide exclusivity, to the craft herein claiming such. And such evidence is required in cases of this type (Third Division, 21854; Public Law Board No. 3348; Award No. 1).

Any new information or arguments found in either Submission to this Board which had not been exchanged by the parties during the handling of this case on property is inadmissible (Third Division, 21463, 21841).

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

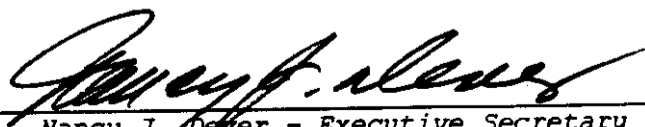
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.