

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25136
Docket Number MW-23905

Wesley A. Wildman, Referee

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

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

(1) The Carrier violated the Agreement when it assigned Mechanical Department employees to construct and paint a building at Eugene, Oregon beginning April 16, 1979 (Carrier's File MofW 152-870).

(2) B&B Welder B. C. Jefferson be allowed sixty (60) hours of pay at his straight-time rate and B&B Painter D. P. Moore be allowed one and one-half hours of pay at his straight-time rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: This case arises out of the fact that Boilermakers on Carrier's property constructed and painted an 8 foot by 8 foot, 3/16 inch sheet metal storage shed. Carrier defends the appropriateness of Boilermakers doing this kind of work, stressing that the chore was done in the Boilermakers shop and that the shed is small, metal, and portable. B and B personnel (a welder and a painter), represented here by the Maintenance of Way Brotherhood, claimed that the fabrication of this shed is properly their work; after all, they point out, it is a building.

The scope clause involved here is general in nature, containing no specific language which is dispositive of the issue before us. This being the case, it is appropriate to turn to considerations of history, custom and practice to determine whether it was the intent of the parties to reserve the work here in issue exclusively to B and B employees.

There are many (largely offsetting) submissions by both Parties of marginal probative value bearing on the issue of practice. For instance, the record is replete with statements from Carrier officials that shed construction has historically been performed by Boilermakers on this property, and other statements from Organization officials that this work has traditionally been done, virtually throughout the system, by B and B personnel. Also, the Organization has presented numerous exhibits indicating settlements in favor of the Organization on similar claims (despite the fact that these documents state on their face they have no precedential value and constitute evidence not normally considered by this Board) counterbalanced by an equally hefty set of claims filed on similar issues over the years and alleged by Carrier to have "died" (again, evidence not normally given weight by this Board).

In short, we are constrained to hold, on the basis of the record before us, that the Organization has not met the burden of demonstrating with any conclusiveness whatsoever that shed fabrication of the kind involved in this case has historically belonged to, or been intended by the parties to belong exclusively to, B and B personnel on this Carrier's property. Accordingly, the claim must be denied.

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 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 9th day of November 1984.