

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25350  
Docket Number MW-25222

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(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 used other than carpenters to perform carpenter's work at Eugene, Oregon October 6 through October 9, 1981 (Carrier's File MofW 152-936).

(2) Because of the aforesaid violation, furloughed Carpenters R. J. Judd and W. L. Cutshell shall each be allowed ten (10) hours of pay at the carpenter's straight time rate.

OPINION OF BOARD: By letter dated November 1, 1982, a claim was filed on behalf of two senior Class A Carpenters on furlough status for ten hours straight time rate each. The claim alleges that other than Class A Carpenters were assigned to the building and erecting of a wood and metal roof over an existing concrete slab adjacent to the Carrier's B&B shop and office building at Eugene Yards, Eugene, Oregon. The work allegedly took place between October 6, 1981, and October 9, 1981.

The Carrier does not deny that the work in question was performed on the dates in question, or that it was not performed with the assistance of the B&B Foreman and Assistant Foreman. It is the position of the Carrier that the latter are not prohibited from doing such work by the Agreement. It is the further contention of the Carrier that past practice on this property is such that "Foremen and Assistant Foremen have always assisted in the performance of B&B work, the same as Track Foremen and Water Service Foremen throughout the Western Lines on the Southern Pacific Transportation Company" (Letter of January 14, 1983). The Carrier is also in disagreement with the Organization on exactly how long it took to do the work in question.

A review of the record shows that while the claim references a number of different Rules of the current Agreement which the Carrier allegedly violated because of the work performed between October 6-9, 1981, the claim appears to lean heavily on Rule 1 which is the Scope Rule. An examination of that Rule shows, however, that it is a general classification Rule and as such cannot provide support for a claim such as the instant one. This Board has ruled numerous times in the past that such a Rule does not provide exclusive grants of work to each classification listed under the Rule (Third Division Awards 12501, 12668, 12949).

The Organization also argues on the basis of current Agreement Rules 3, 5 and 26(f) which address the issues of classes, seniority and wage schedule. After studying these Rules the Board is unpersuaded that they form the basis, in combination, for sustaining the instant claim. The Organization as moving party must also bear the burden of proof with respect to substantial evidence showing when it is a question of any past practice violation. A search of the record fails to produce such proof. There is insufficient evidence of probative value in the record to warrant conclusion that the Carrier was in contravention of either Agreement Rules or past practice when it assigned the personnel it did to build the structure in question on October 6-9, 1981. The claim cannot, therefore, be sustained.

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

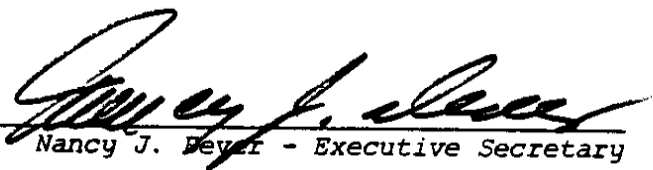
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.