

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25563
Docket Number MW-25387

Frances Penn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak)

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

(1) The Agreement was violated when on November 17, 1981, Car Shop employees were assigned and used to perform Maintenance of Way work at the Paoli Car Shop (System Docket 357).

(2) Because of the aforesaid violation, Carpenter Foreman D. Parker and Carpenters T. Hudson and E. Pewdo shall each be allowed eight (8) hours of pay at their respective straight time rates.

OPINION OF BOARD: Two Conrail Car Shop employees were used to build a wooden base made of ties around the bottom of an office trailer. The trailer had been moved by Conrail onto Amtrak property which had been leased to Conrail. The Organization maintains that the work should have been assigned to Carpenters in the Amtrak Bridge and Building Department because work of this character has traditionally been performed by Carpenters and contractually belongs to them. The Organization contends that the Carrier assigned or otherwise permitted the assignment of Conrail employees to do this work. The Carrier maintains that the trailer in question was moved onto the Carrier's property without the Carrier's knowledge and was used solely for the benefit of Conrail. The work on the trailer was performed at the direction of Conrail without the Carrier's knowledge and at Conrail's expense. The Carrier states that it did not have and still does not have any B&B employees headquartered or assigned to the Paoli facility; the only work done by Amtrak B&B employees at that facility was done at the express request of Conrail.

The Board finds that the Organization has failed to produce evidence to substantiate its claim. The record shows that the trailer stood on property that had been leased to Conrail by the Carrier and was not under the control of the Carrier. The Carrier had no knowledge of the trailer or the work to be done on it; the Carrier did not assign the employees who did the work. Many previous awards hold that work performed by a Lessee on leased property which is not used for the benefit of the Carrier or under the control of the Carrier is not covered by the Scope Rule. (See Third Division Awards Nos. 14641, 21283 and 23575 among many others.) Under the circumstances of this situation, the Carrier had no contractual obligation to have its B&B forces perform the work on property which had been leased to Conrail. Therefore, no violation of the Agreement occurred.

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

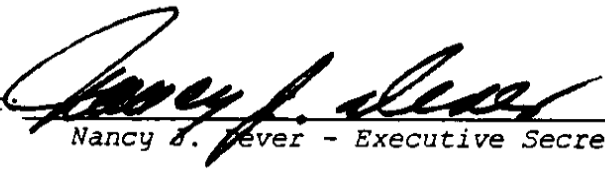
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest.


Nancy A. Bever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.

