

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25652  
Docket Number MW-25431

Referee Eugene T. Herbert

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employes  
( The Chesapeake and Ohio Railway Company  
( Southern Region)

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

"(1) The Carrier violated the Agreement when it assigned Electricians and Pipe Fitters to fasten brackets to structural steel columns at Huntington Shops on June 21, 22, 23, 28, 29, 30 and July 7 and 8, 1982 (System File C-TC-1387/MG-3616).

(2) Because of the aforesaid violation, Messrs. G. A. Gosnay, A. Adkins, C. D. Lambert, H. D. Dean, D. L. Dean, W. W. Smith, C. R. Stratton, L. Spry, Jr., M. Dial, I. Wiley, C. Conley, H. J. Clay, S. Byrd and D. L. Farnsworth shall each be allowed pay at their respective rates for an equal proportionate share of the one hundred twenty-four (124) man-hours expended by Electricians and Pipe Fitters in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: The Organization, on behalf of fourteen (14) named Claimants, makes a Claim for pay for time because work assertedly within the scope of jurisdiction of the Bridge and Structures Group was performed by Sheet Metal Workers and Electricians in Carrier's employ.

On various dates between June 21 and July 8, 1982, Carrier assigned Sheet Metal Workers to install brackets for the support of space heaters on structural steel columns, and electricians to run conduit and wiring for the heaters, at its Huntington, West Virginia shop buildings. For this purpose the Sheet Metal Workers drilled some holes in the columns and bolted to them the support brackets which had earlier been fabricated in the Blacksmith Shop.

The Organization filed a Claim for the work, which the Carrier declined initially and on appeal. The Claim was then brought before this Board.

The Organization asserts that the Carrier's action violated the Scope provisions of the Agreement between them. Rule 66(c) of the Agreement states in part:

"(c) ...bridge and structures forces will perform the work to which they are entitled under the rules of this agreement in connection with the construction, maintenance, and/or removal of...buildings or structures, except where such work is performed by other employees under other agreements in accordance with the rules of such agreements or past practice in the allocation of such work between the different crafts, including work performed by shopmen in connection with the maintenance of shops..."

The Organization asserts that the Scope provisions of the Agreement clearly identify the work in question and exclusively reserve the work to the Bridge and Structures Group. Specifically, the Organization asserts that drilling holes in any part of a structure, as well as the attachment of brackets thereto, is within the work jurisdiction of its employees. The Organization argues that the Carrier did not demonstrate that such work has historically been performed by other Crafts so as to justify assigning the work to other than Bridge and Structures Group Employees.

The Carrier asserts that the applicable Scope Rule is general in nature and, under Board precedent, requires proof that the Craft asserting jurisdiction has historically had exclusive right to the work on a system-wide basis, proof which the Carrier asserts was not submitted by the Organization in the instant Claim.

Under applicable Board Rules, the Sheet Metal Workers International Association and the Electrical Workers were notified of the Organization's Claim of entitlement to the work performed. Each submitted an Intervening Statement. Each of those Statements asserts that the disputed work is not exclusive to the Bridge and Structure Forces, but rather is exclusive to the intervening Organization. The Electrical Workers' submission is supported by statements of employees regarding past practice.

The Board concludes that the Scope Rule in the Agreement between the Organization and the Carrier does not by specific terms clearly cover the work in dispute in the instant case. Installation of brackets, involving as it did here the drilling of holes in and affixing of brackets to structural columns, does not in any manner constitute the construction, maintenance or removal of a structure.

Accordingly, the Organization had the affirmative burden of establishing that it had the exclusive right by past practice to such work on a system-wide basis. Not only did the Organization fail to meet that burden but the evidence adduced by the Carrier and the Intervenors is indicative that it could not have done so.

Accordingly, the Board must deny the Claim.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1985.