NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25653

THIRD DIVISION

Docket Number MW-25438

Eugene T. Herbert, Referee

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

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

(1) The Carrier violated the Agreement when it assigned Shop Craft employes instead of Bridge and Building Department forces to paint the Sand Tower and Turntable at Handley, West Virginia beginning June 14, 1982 (System File C-TC-1364/MG-3628).

(2) Bridge and Building Department Mechanics K. D. Brown, J. D. Cupp, C. W. Hanshaw, R. E. Adkins, W. P. Steele and D. E. Scarberry shall each be allowed pay at their respective rates for an equal proportionate share of the thirty-two (32) man-hours expended by Shop Craft employes performing the work referred to in Part (1) hereof.

OPINION OF BOARD: The Organization, on behalf of six (6) 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 Shop Craft Employes in the Carrier's employ.

The Organization contends that, beginning on June 14, 1982 and extending into the week of June 21, 1982, the Carrier assigned Machinists and Electricans, none of whom held any seniority in the Bridge and Structures Group, to paint the Turntable and Sand Tower in Handley Yard at Handley, West Virginia and that said Electricians and Machinists expended a total of twelve (12) man-hours painting the Sand Tower and twenty (20) man-hours painting the Turntable. The Organization further contends that work of this character has customarily and traditionally been performed by the Carrier's Bridge and Structures Forces and is contractually reserved to them under the provisions of Rule 66(c) which reads in part as follows:

> "(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 bridges, tunnels, culverts, piers, wharves, turntables, scales, platforms, walks, right of way fences, signs, and similar buildings or structures, except where such work is performed by other employees under other 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, enginehouses, and other facilities

within shop limits...and at other points in connection with maintenance of way and structures, tools, equipment, and materials. Mechanics engaged in such work (except those engaged in painting) will be classified as carpenters or masons according to work. Mechanics engaged in painting will be classified as painters or sign and signal painters according to work. Carpenter forces will be permitted to do spot painting in connection with repair work carried out by them in order to prevent unsightly appearance until painters come in to do programmed general painting. Painters will be permitted to drive up nails in loose siding, glaze sash in connection with painting, and do other miscellaneous light work around buildings, structures, and signs on which they are carrying out painting work."

The Carrier contends that Rule 66(c) is general in nature and that the Organization is, therefore, bound to establish its historic, customary and exclusive right to the work in question on a system-wide basis. The Carrier further asserts that Machinists and Electricians have traditionally done the work in question which consisted of painting the bottom of a sand tower to a height of three feet and a handrail on a turntable and that the painting was done for reasons of safety rather than for the maintenance of these structures.

There can be no argument that turntables, including handrails affixed to them, and sand towers are structures specifically referred to in Rule 66(c). Neither can there be any doubt that it was the intention of the parties in formulating that Rule to reserve the work of maintenance of those structures to the Bridges and Structures Group.

The concession by the Carrier that these structures were indeed painted by other than Claimants raises the question as to why they were painted. Maintenance is a common, perhaps primary, purpose of painting industrial structures. Accordingly, the Organization's claim that the express provisions of Rule 66(c) have been abrogated by the Carrier places a burden of proof in this case on the Carrier to establish that the painting in question was for other than maintenance purposes and, thus, outside the ambit of the Rule. Here the Carrier failed in its burden of proof. Its multiple assertions that the work in question was customarily accomplished by Machinists and Electricians fail to achieve the level of evidence.

However, the International Association of Machinists and Aerospace Workers and the International Brotherhood of Electrical Workers were, in accordance with applicable Board rules, given notice of the Organization's claim of entitlement to the work performed and each submitted an Intervening Statement. The Statement submitted by the Electrical Workers is supported by a number of statements from employes which lead the Board to conclude that safety was indeed the primary purpose of the painting in this case. The fact that the sand tower was painted only to a height of three feet and the fact that the handrail attached to the turntable was painted, but not the turntable itself, are persuasive. Under those circumstances, it became incumbent upon the Organization to establish its exclusive and traditional right to perform the safety painting work. The Organization did not do so in this case and, in light of the aforementioned Intervening Statement, it is doubtful that it could have done so.

The Board must accordingly conclude that Carrier did not violate the Agreement by assigning the work in question to its Shop Craft Employes.

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 Employes involved in this dispute are respectively Carrier and Employes 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 30th day of September, 1985