

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25817

Docket Number MW-25492

Eckehard Muessig, Referee

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

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 perform maintenance work along Pit 25 in the Wheel Bay at the Huntington Shops on August 17, 1982 (System File C-TC-1425/MG-3671).

(2) Because of the aforesaid violation Bridge and Building Mechanics C. R. Stratton, W. Smith, I. Wiley, G. Gosnay, H. Clay, D. L. Dean, C. Hanshaw, S. Byrd and D. L. Farnsworth shall each be allowed an equal proportionate share of the sixteen (16) man-hours consumed by Shop Craft employes in the performance of the work referred to in Part (1) hereof."

OPINION OF BOARD: This Claim arose when the Carrier assigned Shop Craft Laborers to perform repairs to concrete along Pit 25 in the Wheel Bay at the Huntington Shops, Huntington, West Virginia.

The Organization asserts that work of this character has traditionally and historically been performed by, and is contractually reserved to, the Carrier's Bridge and Structures Forces. It relies upon its construction of Rule 66-Classification and numerous past arbitral awards to support its basic contentions that the Agreement had been breached.

The International Brotherhood of Firemen and Oilers were notified of this Claim as possible parties of interest, but that Organization determined not to intervene.

Although the Board notes that the parties do not agree on the precise date on which the alleged breach of Agreement occurred, both agree that it took place in August 1982. It is apparent that the work performed is not under dispute. Given these circumstances, we do not find a defect in the Claim that would serve to set it aside on that basis.

Turning to the merits, the Board concludes that the Organization has met its burden of proof. The Carrier's basic response to the Claim essentially rests on a contention that it had to utilize the most readily available employee because of an emergency situation. This contention is not supported by the evidence of record.

Turning to the amount of damages claimed, the Board finds these to be excessive, in view of the nature of the breach. We award two (2) hours' pay at the straight time rate in accordance with Part 2 of 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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy G. Bever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1985.