

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25820  
Docket Number MW-25495

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(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 Car Department forces instead of Bridge and Structures forces to install four lock hasps on steel doors at the Huntington Shops on August 4, 1982 (System lFile C-TC-1423/MG-3670).

(2) As a consequence of the aforesaid violation B & B Mechanics G. Gosnay, W. Smith, I. Wiley, H. Clay, S. Byrd, D. L. Dean, D. L. Farnsworth and C. Stratton shall each be allowed pay at their respective straight-time rate for an equal proportionate share of the sixteen (16) man-hours expended by Car Department forces in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: In this Claim, the Organization contends that the Carrier used Car Department Employees to install four (4) lock hasps on steel doors at its Huntington shop, Huntington, West Virginia. It asserts that this kind of work, as here under dispute, has customarily, historically, and traditionally been performed by the Carrier's Bridge and Structures Forces and is reserved to them under the provision of Rule 66 - Classification.

The Brotherhood Railway Carmen of the United States and Canada were notified of this Claim as possible parties of interest, but that Organization determined not to intervene.

The Carrier essentially argues that it utilized one Carman for one hour to perform the disputed work. Moreover, it asserts that because the work was performed as a security measure of an urgent nature, it used the most readily available employee. It avers that it had no intent to circumvent the Agreement.

The Board concludes that the Organization has met its burden of proving a breach of the Agreement. The evidence establishes that the work claimed, under the particular circumstances herein, clearly belonged to the Claimant's Organization. On the property, the Carrier did not refute the Organization's contentions with respect to the accrual of the work, but, rather, disallowed the Claim on the basis of immediate need. While this may be proper under certain circumstances, we do not so find here and the Claim is sustained with respect to the breach of the Agreement.

Turning to the hours claimed, we find this Claim to be excessive. The best evidence indicates the work was performed in one hour. We therefore sustain Part 2 of the Claim to the extent of one hour's pay at the straight time rate of pay.

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 J. Dever - Executive Secretary

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