

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25929
Docket Number MW-25664

George S. Roukis, 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 employes instead of Bridge and Structures Department employes to replace a 'cat walk' over the water tank area at the Pipe Shop On November 11, 12 and 15, 1982 (System File C-TC-1503/MG-3804).

(2) Because of the aforesaid violation, B&B Mechanics K. Brown, I. Wiley, D. Farnsworth, H. Clay, R. E. Adkins, W. P. Steele, C. Perry and C. Hanshaw shall each be allowed pay at their respective rates for an equal proportionate share of the twenty-four (24) man-hours expended by Car Department forces in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: The Organization contends that Carrier violated the Controlling Agreement, particularly Rules 66(a) and 66(c) when Carrier assigned a Shop Craft employe (Carman) to construct and/or repair and install a wooden cat walk over the water tank in the Pipe Shop building at Huntington, West Virginia. The work, according to the Organization, was performed on November 11, 12 and 15, 1982. The Organization asserts that work of this character is contractually reserved to employes holding seniority in the Bridge and Structures Group as evidenced by the specific protective language in Rule 66(c). It avers that the cat walk was attached to the super structure (overhead beam) of the building, which is definable covered work under Rule 66(c). Rule 66(c) reads as follows:

"(c) In carrying out the principles of Paragraph (a), bridge and structures forces will perform the work in 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 employes 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, enginehouses, and other facilities within shop limits and shop work done at Barboursville Reclamation Plant and at other points in connection with maintenance of way and structures tools, equipment, and materials."

Carrier argues that it was permissible under Rule 154 of the C&O Shop Crafts Agreement for the Carmen to perform this work. It asserts that Rule 154 gives the Carmen craft the right to perform various carpentry duties in the shops and yards, except for work generally recognized as Bridge and Building Department, and avers that this type of work was historically performed by Carmen. It maintains that on November 12 and 15, 1982, the assigned Carman merely constructed scaffold boards and applied cleats to replace boards in the overhead area at the steam regulator station without affecting the structural integrity of the Pipe Shop building. In effect, it contends that the platform was a portable device. Moreover, it disputes the Organization's contention that work was performed on November 11, 1982, since this date according to Carrier was a holiday observed by Shop Forces.

In our review of this case, we concur with the Organization's position. Simply stated, we cannot in the absence of a compelling showing that Carmen consistently performed this type of work disregard the clear language of Rule 66(c). It reserves the work of constructing and maintaining platforms, walks, and similar structures to Bridge and Structure Forces. Since the disputed work herein was generally more akin to the basic work set forth in this rule, it was incumbent upon Carrier, as part of its affirmative defense, to prove that it was performed by the Carmen in accordance with Rule 154 and demonstrable past practice. The Organization had persuasively established that Rule 66(c) was pertinent and the burden thus shifted to Carrier. Since the record does not contain evidence depicting any identifiable specific incident where Shop Craft forces performed work of this character, we must conclude that it rightfully belonged to the Organization. On the other hand, we must agree with Carrier regarding the time involved in performing this work and find that it was performed on November 12 and 15, 1982. The Organization has not rebutted Carrier's averment that November 11, 1982 was a holiday for Shop Forces. Accordingly, and upon the record we will sustain the claim for sixteen (16) hours.

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.

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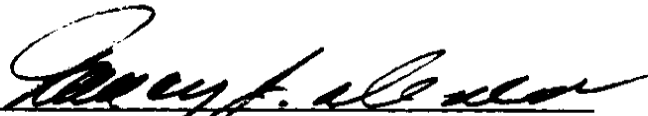
Page 3

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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 26th day of February 1986.