

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26460
Docket Number MW-26190

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Agreement when it assigned Track Department forces instead of Bridge and Building Department forces to redeck the turntable at East St. Louis on October 10, 11 and 12, 1983 (System File SSW-0-481/53-690).

(2) The claim as presented in a letter dated December 5, 1983 by General Chairman R. L. Loch shall be allowed as presented because Regional Engineer R. E. Cox did not give reasons for his declination thereof dated December 12, 1983.

(3) As a consequence of either or both (1) and/or (2) above, B&B Foreman L. V. Woolley and B&B Mechanics L. R. Seymour and V. D. Woolley shall be allowed

'a total of 270 hours, to be divided
equally between the claimants.'

OPINION OF BOARD: The relevant facts of this Claim are not in dispute. Commencing on October 10, 1983, Carrier assigned ten Roadway Track Department employes to renew the decking on the turntable at East St. Louis, Illinois. As a result, the Organization filed this Claim. In it, the Organization contended that Bridge and Building Department Forces should have been used to redeck the turntable.

Carrier timely rejected the Claim. Upon the parties' failure to resolve the dispute on the property, the matter was advanced to this Board for adjudication.

The Organization points out that Article 6 of the Agreement clearly establishes separate classes for the Roadway Track Department and the Bridge and Building Department. In its view, work accruing to employes holding seniority in the latter Department includes the redecking and repair of turntables. As such, the Organization insists, Carrier violated the Agreement, when it assigned such work to employes in another class -- the Roadway Track Department.

In addition, the Organization maintains that the Claim should be sustained on procedural grounds, as well. It notes that Article 15, Section 1(a) requires Carrier to "give written notification to whoever filed the claim of the reasons for such disallowance and if not so notified the claim will be

allowed as PRESENTED." In the Organization's view, Carrier's initial declination letter did not include any such reasons. Thus, the Organization asserts that the Claim should be sustained on procedural grounds in addition to the merits.

After carefully reviewing the record evidence, we are convinced that the Claim must fail. This is so for a number of reasons. First, Carrier answered the Organization's Claim within the sixty day time limit specified in the Agreement. Carrier clearly rejected the Claim. The Organization was fully apprised, on the property, of Carrier's position. In the future, however, Carrier would be well advised to more adequately specify its reasons for declining a Claim at the lowest level of appeal. Carrier's failure to do so in this instance does not warrant sustaining the Claim.

On the merits, we are convinced the Claim must be denied. Nothing in the record evidence suggests that Bridge and Building employes have repaired turntables to the exclusion of all others. The rules of that Department do not make reference to "turntables." Instead, they indicate that employes are responsible to maintain and repair "structures." At best, these employes inspect machinery "installed on turntables." Under these circumstances, the Organization has failed to establish by probative evidence that the work in dispute belongs to Bridge and Building employes.

The Organization bears the burden of establishing a claimed right to work (see Third Division Award Nos. 25870 and 24739). Thus, Carrier was not barred from assigning the disputed work to Roadway Track Department employes. Accordingly, and for these reasons, the Claim must fail.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.