

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26551
Docket Number MW-26264

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Seaboard System Railroad

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

(1) The Carrier violated the Agreement when it used Mechanical Department forces instead of Bridge and Building Department forces to construct concrete floors, foundations, ramps and a building at Uceta Yard, Tampa, Florida, beginning on or about September 8, 1980 [System File C-4-(36)-Tampa Div.-9/12-1(83-21)K2].

(2) Because of the aforesaid violation, each Group A B&B employee holding an assignment on the Jacksonville and Tampa Divisions during the claim period be allowed pay at their respective straight-time rates for an equal proportionate share of the total number of man-hours expended by Mechanical Department forces in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: This is a Claim on behalf of B&B Subdepartment Group A employees to work performed by Mechanical Department employees (Carmen) in reference to certain concrete work and relocation and reconstruction of a building at the Uceta Shops, Tampa.

In its defense, the Organization cites its Scope Rule which reads as follows:

"RULE 1

SCOPE

These Rules cover the hours of service, wages and working conditions for all employees of the Maintenance of Way and Structures Department as listed by Subdepartments in Rule 5 - Seniority Groups and Ranks, and other employees who may subsequently be employed in said Department, represented by Brotherhood of Maintenance of Way Employees.

This Agreement shall not apply to:
Supervisory forces above the rank of foremen,
clerical employees and Signal and Communications
Department employees."

As a Third Party in interest, the Brotherhood Railway Carmen of the United States and Canada was notified of the dispute but declined to intervene.

At the outset of its Submission, the Carrier raises objection to the form of the Claim, in that individual employees are not cited as claimants. As will be discussed below, previous Awards involving the same parties have been set forth in similar fashion. Without setting aside the accepted requirement for specificity in claims, the Board finds it appropriate in this further instance to resolve the matter on its merits.

The Carrier has presented a substantial record over an extended period showing that Mechanical Department employees have been engaged in concrete work. Further, the building in question was originally constructed by Mechanical Department employees, and they were employed here in its relocation.

There have been a number of Awards addressing the same question as here. Those cited to the Board by the Carrier have uniformly found that, in regard to such construction work, the Scope Rule does not require the remedy which the Organization seeks here. As one example of such Awards, Third Division Award No. 26208 states:

"The Scope Rule involved in this Claim is general in nature and this Claim is one of a series of recent Claims regarding its meaning or application. Award 25090 states:

'This Board has carefully reviewed the record of this case and the many citations submitted by both sides in support of their respective positions. The results of that review reveals that Carrier is correct that both B & B Department personnel and Mechanic Department personnel have performed the disputed work at various times and various locations on the property. It also reveals that the Scope Rule involved here is general in nature and does not specify that the disputed work belongs only to the B & B Department employees.'"

There is no contention that the work involved is not of the nature customarily performed by employees represented by the Organization. Rather, the Carrier argues and the Board finds that there is no contractual sanction which confines the particular work here at issue to the Claimants. In so finding, the Board is supported by the cited and other Awards in similar circumstances to the same effect.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

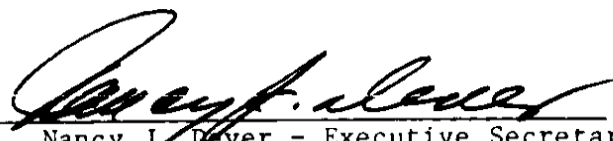
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.