

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Southern Pacific Transportation Company (Western Lines)

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

(1) The Carrier violated the Agreement when it assigned Purchasing and Materials Department forces instead of Bridge and Building Department forces to dismantle the wooden floor, anchored to a cement slab, at the South end of the 'Old Sawmill' in the Locomotive Works Facility at Sacramento, California, on February 10 and 11, 1983 (Carrier's File MofW 152-974).

(2) Because of the aforesaid violation, Foremen N. F. Shull and B. H. Mollart, Assistant Foreman P. Oslow, Welder T. A. Freeman, Carpenters J. E. Lee and S. R. Griffith and Steelman L. F. Childs shall each be allowed pay at their respective straight time rates for an equal proportionate share of the ninety-six (96) man-hours expended by Purchasing and Materials Department employees in performing the work referred to in Part (1) hereof."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In this dispute, both parties have raised issues and arguments in their Submissions to the Board that were not advanced on the property. Accordingly, this Board is precluded from considering these matters because they were not raised on the property.

With respect to the questions properly before us, the significant events are as follows:

- (a) February 25, 1983: The Organization submitted its initial claim to the Carrier's Regional Engineer. It mainly asserted that, on the dates claimed, the Carrier assigned employees of the P & M Department to perform Bridge and Building Sub-Department work. It then described the work consisting of "...dismantling a floor 54 feet by 60 feet which was anchored to a concrete slab in a building located on the southeast end of the old sawmill, now called the Track Distribution Center within the Sacramento Locomotive Works Facility." The claim also included the names of the employees of the P & M Department who allegedly did the disputed work and asked for 96 hours compensation for the Claimants.
- (b) April 7, 1983: The Carrier's Regional Engineer denied the claim stating in pertinent part: "Have investigated above claim and find that the wooden floor referred to in said claim was not anchored to the concrete underneath, it was considered scrap lumber."
- (c) May 9, 1983: The General Chairman appealed the decision of the Regional Engineer. The appeal letter: (1) listed the names, service date, occupation, and assignment of the Claimants; (2) listed the names and title of the personnel who allegedly did the disputed work as well as the number of hours each worked; (3) cited the various Rules relied upon for support of the claim; (4) described the claimed work by, in part, stating "...commenced the stripping of inside wooden floor which was anchored to cement slab and walls of a building located at...Sacramento, California," noting that the material removed was permanently anchored and secured to the cement slab foundation and consisted of 1"x4"x8' plywood sheeting which had been cut to various dimensions and thereafter nailed to 2"x4" boards covering an area approximately 54' wide x 60' long, equivalent to 3,240 square feet; (5) stated that the Carrier's Material Handling Foreman did not believe such work was that of his department, but he was only following instruction; (6) stated that "thereafter, Bridge and Building Sub-department employees" (the Claimants) were called to complete the project; (7) quoted that part of Rule 1 - Scope on which it relied as follows:

"These rules govern rates of pay, hours of service, and working conditions of employees in all sub-departments of the Maintenance of Way and Structures Department (not including supervisor employees above the rank of foreman) represented by the Brotherhood of Maintenance of Way Employees, such as: foreman and assistant foremen of bridges, buildings, tunnel, painter, construction concrete, mason, water supply, plumbing, paving, fence gang, pile driver, and all employees coming under the supervision of such foreman."

- (d) December 15, 1983: The Carrier again rejected the claim. It stated that because the initial claim of February 25, 1983, did not specify any Rules that allegedly had been violated and because the appeal letter of May 9, 1983, amended the claim, the claim was not the same and, therefore, was improperly before the Carrier. Moreover, it contended that:

"The removal of a scrap wooden floor by employees of the Purchasing and Materials Department consisted of removal of a wooden floor layed over a concrete slab and was not anchored to cement as alleged. The removal of the floor was not a job which necessitated any knowledge or finesse. The floor was just ripped up by a fork lift and scrapped.

In support of our position, we were handed three written statements dated May 10, May 24 and June 7, 1983, from Purchasing and Materials Department Supervisors in support of our contentions.

In addition, Rule 1, Scope Rule of the current agreement, which simply lists categories and does not describe or define work to be performed, is general in nature. See Third Division, National Railroad Adjustment Board, Awards 12929, 12927, 12694, 10389, 11129, 15538, 19190, 19306, 19761, 20421, 21768 and 21898. Claimants were fully employed at the time and dates indicated and therefore lost no earnings as a result of the alleged violation."

The three statements obtained by the Carrier included one which essentially asserted that the wooden floor was not anchored to the concrete, that it was scrap lumber, and that it took approximately three (3) hours to remove. Another statement asserted that the floor was stripped, the lumber scrapped and "there had been been no work done to the concrete foundation." The remaining statement was from the Foreman who allegedly had stated that the work did not belong to his Department. This person wrote that he did not make a statement to the Organization's B&B Supervisors and that his crew of five (5) men worked on the "tearing up of flooring" for approximately four (4) hours.

- (e) March 5, 1984: The Organization addressed the prior Awards the Carrier had relied upon when it rejected its claim. It again asserted its Scope Rule contentions and provided statements from the Claimants that the floor was attached and anchored to the concrete floor.

- (f) June 22, 1984: The Carrier rejected the claim, contending that nothing new had been brought forward to warrant a change in the decision rendered on December 15, 1983.

Pursuant to Section 3, First (j) of the Railway Labor Act, as amended, notice was given to B.R.A.C. of this claim as a possible party of interest. B.R.A.C. has filed a submission, claiming that the work at issue is covered by its Scope Rule.

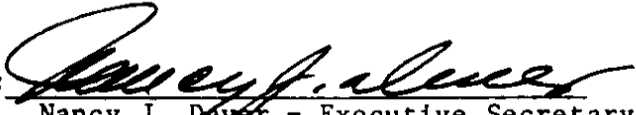
The Board has carefully reviewed the record. We find that the considerable exchange between the parties consists of assertions, conclusionary and conflicting statements and that these are without sufficient evidence of probative value to consider in reaching a decision of this claim. Accordingly, while we would prefer to reach a determination on the merits of this dispute, we are constrained to dismiss the claim despite our reluctance to do so.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.