

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(Soo Line Railroad Company

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

(1) The Carrier violated the Agreement when it assigned Mechanical Department forces instead of Bridge and Building Department forces to construct a building to house the air compressor in the Car Repair Shop at Shoreham on August 26, 29, 30 and 31 and September 1 and 2, 1983 (System File 1 45(c)/800-46-B-175).

(2) Because of the aforesaid violation, each member of B&B Crew 614 (Messrs. R. Palmer, W. Nichols, V. Kostrzewski, C. Bailey, E. Dunn and S. DeJarlis) shall be allowed sixteen (16) hours of pay at their respective straight time rates."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

As Third Party in Interest, the Brotherhood Railway Carmen of the United States and Canada was advised of the pendency of this dispute, but chose not to intervene.

This claim was filed after employees belonging to the Carman craft were permitted to build a structure of framed wood construction to house and soundproof a compressor located in the Car Repair Shop at Shoreham on August 26, 29, 30, and 31, 1983, and September 1, and 2, 1983. The instant claim maintains that the work should have been performed by members of the Organization. The Organization contends that the disputed work is contractually reserved to the Carrier's Bridge and Building Sub-department employees under the provisions of Rule 45(c) which reads:

"RULE 45 - Classification of Work

\* \* \*

(c) An employee assigned to construction, repair, maintenance, or dismantling of buildings, bridges, or other structures (except the iron or steel work), including the building of concrete forms, erecting false work, etc., or who is assigned to miscellaneous mechanic's work of this nature, shall constitute a bridge and building carpenter and/or mechanic." (Emphasis added)

The Organization stresses that the foregoing Rule clearly and unambiguously encompasses work of the character involved here.

Carrier argues, on the other hand, that while Rule 45(c) of the Agreement delineates as among members of the same craft ("intra-craft"), the work of various members of the Organization, it does not grant the employees the exclusive right, inter-craft, to perform such work. Furthermore, Carrier asserts, without rebuttal by the Organization, that the work in dispute, i.e., soundproofing, has historically been performed by employees of the Mechanical Department. The Organization has the burden of proving that its members were exclusively entitled to the work in dispute, Carrier stresses, and in this case, that burden has not been met.

We have carefully considered Rule 45(c), the Classification of Work Rule relied upon by the organization, as well as Rule 1, the Scope Rule, which reads:

"RULE 1 - Scope

These rules shall govern the hours of service, working conditions, and rates of pay of all employees in the Maintenance of Way and Structures Department, except that they shall not apply to:

1. Roadmasters, B&B Supervisors, Signal Supervisors, their assistants and/or other comparable supervisory officers and those of higher rank.

2. Employees governed by the provisions of existing agreements between the Company and other labor organizations, such as Federated Crafts, Signalmen, Communications Workers, Technicians, Clerks, etc."

It is our view that the foregoing Rules do not guarantee or reserve work exclusively to any specific classifications. An examination of the Scope Rule indicates that it is general; furthermore, prior Awards of this Division have held that classification rules similar to that presented here do not per se constitute a reservation of work rule. See, Third Division Awards 22144, 21843. Without an express reservation of work guaranteed to them by contract, the Organization was obligated to show that its members have historically performed the work. There is no such showing in the record before us, and therefore we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1989.