Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28185
Docket No. MW-27788
89-3-87-3-286

The Third Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corporation (Amtrak) -
(Northeast Corridor

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

(1) The Agreement was violated when, on November 14, 1985, the Carrier used Training Instructors A. Peterson and F. Jaworski to perform plumbing work in the Oil House in the Penn Coach Yard at Philadelphia, Pennsylvania (System File NEC-BMWE-SD-1454).

(2) Plumbers B. Gunkle and F. Ruddle shall each be allowed eight (8) hours of pay at their respective straight time rates because of the violation 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 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.

This dispute involves two Training Instructors who were inspecting an oil house to determine whether it was a feasible site for training classes. In the course of the inspection the instructors found that the basement was flooded (due to a clogged drain). They obtained a pump, set it up, and operated it for the purpose of clearing out the water. The Organizaton believes it took eight hours for the work to be accomplished, whereas Carrier insists that it was a total of merely two hours. Based on the record, the Board finds that the time involved was two hours. The two Claimants herein, were plumbers, assigned to the B & B Gang in the area. On the day in question, both men worked their normal assignments.

The Organization insists, first, that the work of pumping water in connection with plumbing repair work has traditionally and historically been performed by B&B subdepartment employees. Further, in this context, it is argued that work of a class belongs to those for whose benefit the contract was made. It is also urged that supervisory personnel outside the scope of the Agreement cannot be used to perform scope covered work. It is maintained that this dispute does not involve other crafts and thus exclusivity is not the issue. With respect to remedy, the Organization argues that while Claimants were fully employed, and suffered no loss, that is immaterial: they suffered a loss of work opportunity. Carrier could have rescheduled Claimants' regular work, rescheduled the disputed work, or had the work performed on an overtime basis. The Organization states, in addition, that it is essential that there be a remedy for the contractual breach.

Carrier argues, alternatively, that the Scope Rule was not violated, and that the Organization has failed to bear its burden of proof. Carrier states that the work in question does not accrue to Claimants by history, practice or custom, nor is it specifically delineated in the language of the Scope Rule. Additionally, Carrier insists that the Claim is excessive.

It is the Board's view, contrary to Carrier's position, that the work in dispute has customarily (though not exclusively) been performed by members of the B&B Department. It would be wholly improper to assign such work to supervisory employees who are not covered by any Agreement (See Third Division Awards 25991 and 15461).

With respect to remedy, the Board recognizes that the Claimants were fully employed during the period that the work was performed. However, Carrier has not introduced any evidence that the work could not have been assigned to the Claimants on either an overtime or rescheduling of work basis. Clearly a monetary remedy is appropriate on two grounds: loss of work opportunity and, further, in order to maintain the integrity of the Agreement. Carrier is correct, however, that the Claim is excessive. In this instance the record substantiates the fact that two hours was all that the work took. Thus, Claimants are entitled to two hours pay each, but at the pro-rata rate for work not performed.

A W A R D

Claim sustained in accordance with the Findings.

Award No. 28185
Docket No. MW-27788
89-3-87-3-286

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.