

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

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago, Milwaukee, St.
Paul and Pacific Railroad Company)

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

(1) The Carrier violated the Agreement when it assigned Storeroom employees to dismantle, assemble and install shelving in Buildings LD-36, LD-1, CD-50, Oil House and Power House on December 3, 4, 5, 7, 10, 11, 12, 13, 14, 17, 18, 19 and 27, 1984 and January 3, 1985 (System Files C #5-85/D-2686-E, C #6-85/D-2686-D, C #7-85/D-2686-F, C #8-85/D-2686-G, C #9-85/D-2686-H).

(2) As a consequence of the aforesaid violation, Bridge and Building Department Employees C. R. Bath, D. D. Bowman, R. C. Brown, L. J. Budahn, A. T. Clark, M. P. DeVries, J. B. Fehler, E. W. Finger, R. W. Hansen, Jr., G. Harris, Jr., G. J. Hubatch, J. T. Ingham, U. Jefferson, J. Jones, J. W. Keller, D. P. Knaak, J. E. Love, D. P. Lynch, R. L. Morrow, K. K. Popp, G. A. Prell, R. W. Prestater, A. C. Schulz, R. C. Stankovsky, T. J. Rueda, J. R. Wayer and D. M. Wild shall each be allowed pay, at their respective straight time rates, for an equal proportionate share of the two hundred sixteen (216) man-hours expended by Storeroom employees in the performance of 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 employe 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 waived right of appearance at hearing thereon.

As Third Party in Interest, the Transportation Communications International Union was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

The Organization in the instant case requests that 27 Bridge and Building Department employees be allowed an equal proportionate share of 216 man-hours expended by Storeroom employees to dismantle, assemble and install shelving in various buildings during the period December 3, 1984, through January 3, 1985. Citing a violation of Rule 4, Department Limits, and Rule 46, Classification of Work, the Organization asserts that the work performed by Storeroom personnel is work which has consistently been done by Bridge and Building forces in the past. Letters from various Bridge and Building employees were offered to show that the disputed work has been performed in the past by Bridge and Building forces.

Carrier's position is that the work in question is not work which is exclusively reserved to or performed by Bridge and Building Department employees. The work has consistently been performed by various crafts throughout the system, Carrier contends. Moreover, Carrier argues that various forces have traditionally been utilized to assemble, install and/or relocate shelving which is incidental to the performance of their own duties in their own particular work area. In any event, Carrier notes, since many of the Claimants were fully employed on the dates of Claim and suffered no loss of wages, no monetary remedy should issue even if the Board finds that a violation of the Agreement occurred.

The resolution of this dispute rests upon whether it was proper to allow Storeroom personnel to perform work in connection with the assembling, installation and relocation of shelving in conjunction with the relocation of the Storeroom facilities with the Carrier's Milwaukee Shop and whether the work has been established as work exclusively reserved to Bridge and Building Department employees.

The Organization relies upon Rule 46 to support the Claim that the disputed work is within the exclusive domain of Bridge and Building forces. Rule 46 provides in pertinent part:

"RULE 46
CLASSIFICATION

* * *

- (b) An employee who, in addition to his other duties, directs the work of men and reports to officials of the Railroad will be designated as a foreman.
- (c) An employee who, in addition to his other duties, assists the foreman in directing the work will be designated as an assistant foreman.

* * *

- (i) An employee assigned to constructing, repairing, maintaining or dismantling bridges, building or other structures (except the work referred to in section (c) of this rule), or who is assigned to perform miscellaneous mechanic's work of this nature, will be designated as a bridge and building carpenter and/or mechanic.

* * *

- (p) A concrete or bridge and building employee assigned to manually perform excavating, back-filling or other common labor in the Bridge & Building Sub-department will be designated as a laborer."

Carrier maintains that the foregoing Rule is general in nature and does not specifically provide that the task of dismantling, assembling and installing shelving is within the exclusive purview of work belonging to Bridge and Building employees. In support thereof, it cites Second Division Awards 10752, 10751 and Third Division Award 20232.

The Board in its review of this matter finds that the cases relied upon by the Carrier are not directly on point as they involve a different organization with different rule provisions (Sheet Metal Workers in Second Division Awards 10751 and 10752), or work that differs from that which is at issue here (cleaning cars in Third Division Award 20232).

Much more directly relevant, in our view, is Third Division Award 19189, cited by the Organization, in which Bridge and Building employees claimed that the Baltimore and Ohio Railroad Company violated the Agreement in assigning Electricians to perform the work of removing and installing certain storage racks. In sustaining the claim, the Board noted:

"We are persuaded that the storage racks herein are, in effect, storage bins. We find they were constructed. We further find that they are affixed to the building and are a part thereof. The mere fact that the rack may be removed does not make it any less part of the building...."

Although this prior Award obviously does not have the same precedential value as case precedent in a court of law under the principle of stare decisis, the Board nevertheless finds no basis for reaching a different conclusion. Unlike a monorail or overhead track, which the Board has previously ruled is not a part of a building structure (see Third Division Awards 19956, 19306), the shelving in the instant case is, in our view, mounted within the building structure and becomes an integral part of it.

Accordingly, we find that the disputed work is reserved to the employees under the explicit language of Rule 46. That being the case, there is no need for the Board to reach the second tier of its analysis; that is, whether the Organization proved that the work was its based on historical practice. Having found that the disputed work is covered by Rule 46, the Carrier's contention that the Organization must prove exclusivity is inapplicable.

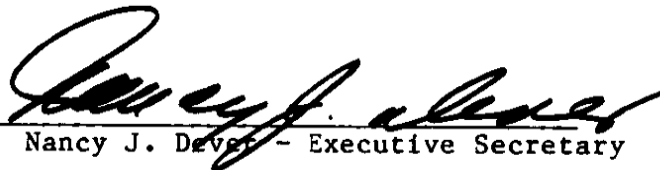
There appears to be some question as to whether Claimants were fully employed on the dates in question. We direct the Carrier to review its records. Any Claimants who were actively employed on the dates of Claim and suffered no loss of compensation shall receive no monetary remedy. If there are any Claimants who were not so employed, their Claims shall be sustained pursuant to paragraph 2 of the instant Claim.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1990.