

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30898.
Docket No. MW-28194
95-3-87-3-783

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Detroit, Toledo and Ironton Railroad Company

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

- (1) The Carrier violated the Agreement when, without the benefit of 'mutual agreement between the Chief Engineer and the General Chairman' it assigned outside forces to install an overhead door on the Spot Shop Repair Building at Flat Rock Yards, Flat Rock Michigan on April 23, 24 and 25, 1986 (Carrier's File 8365-1-208).
- (2) As a consequence of the aforesaid violation, furloughed B&B employees M. E. Petty and R. E. Toupin shall each be allowed eighteen and one-half (18.5) 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 employee or employees involved in this dispute are respectively carrier and employee 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.

The Carrier contracted with Overhead Door Company of Detroit to install an overhead door on the Spot Shop Repair Building at Flat Rock Yard.

The Carrier agreed in a letter dated February 28, 1955 as follows:

"It was also agreed that any future work ordinarily considered maintenance of way work on the Detroit, Toledo and Ironton Railroad will be performed by our own forces when practicable, and that when it is necessary to contract any such work we will confer with the General Chairman and all such contract work shall be by mutual agreement between the Chief Engineer and the General Chairman."

Statements submitted by employees show that in the past Bridge and Building Forces have constructed, maintained, repaired and dismantled overhead doors. Such work also falls within the ambit of the Scope Rule. While the Carrier utilized contractors for such work in the past, the fact remains that employees have also performed this kind of work. The February 28, 1955 letter covers "... work ordinarily considered maintenance of way work." There is no stated requirement that the work be "exclusively" performed by the employees.

Because this kind of work falls within the ambit of the Scope Rule and has been performed by employees in the past, under the February 28, 1955 letter, "... all such contract work shall be by mutual agreement between the Chief Engineer and the General Chairman." Mutual agreement was not obtained by the Carrier as it agreed. The claim must therefore be sustained.

The fact that the manufacturer required installation by its employees for any warranty to be operative does not change the result. The governing language is found in the February 28, 1955 letter which does not consider manufacturers' warranties.

Claimants shall be compensated at the straight time rate for the lost work opportunity.

AWARD

Claim sustained.

Form 1
Page 3

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O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of June 1995.