

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31082
Docket No. MW-30851
95-3-92-3-714

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Grand Trunk Western Railroad Company (former
(Detroit, Toledo & Ironton Railroad Company)

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

- (1) The Agreement was violated when the Carrier posted a notice, dated March 14, 1990, advising that all DT&I Bridge and Building Department employes are required to furnish the specific tools listed therein (Carrier's File 8365-1-309 DTI).
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall rescind the March 14, 1990 notice, cease and desist in attempting to require all B&B forces to furnish the tools cited therein, apply the provisions of Rule 38 as previously interpreted and applied by the parties on this property and to compensate all DTI employes for the actual expense incurred as a result of the Carrier's actions."

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.

On March 14, 1990, the Carrier posted a notice advising all skilled craftsmen of the Detroit, Toledo and Ironton Railroad B&B Department to furnish their own tools that are "customarily furnished by skilled workmen."

The Organization took exception to this notice and filed the instant claim contending that it violated Rule 38.

The Carrier denied the claim contending that there exists a universal, generally accepted custom or practice wedded to skilled workmen (craftsmen) working within and apart from the railroad industry to equip themselves with their own basic tools. Therefore, the Carrier contends it in no way violated the Agreement.

The Organization's basic contention in this case is that DT&I Carrier officials had never previously required B&B employees to purchase tools and therefore, the Grand Trunk Western officials cannot now insist that B&B employees be required to purchase tools. The Organization requested that the March 14, 1990 notice be rescinded.

This case centers on Rule 38 which reads:

"The Company will furnish employees such general tools as necessary to perform their work, except such tools as are customarily furnished by skilled workmen."

The Organization argued that Rule 38 had not previously been given the application that the Carrier was now imposing pursuant to its March 14, 1990, notice. The Organization claimed that Rule 38 had never been interpreted to mean that B&B employees were required to furnish such general tools for the Carrier's service.

However, this Board finds that it does not matter what practice existed previously under the Detroit, Toledo, & Ironton Railroad. This Board agrees with the Carrier that Rule 38 is clear and easily interpretable. Since the language is clear, the fact that there has been some conflicting practice with a previous Carrier, that has now merged with the GTW, does not act to alter or nullify the unambiguous contract language. Custom and past practice are of no probative value in determining the meaning of a labor agreement if the wording is clear and unambiguous. As the Board stated in Second Division Award 2140 back in 1956, "It is only when a rule is ambiguous that accepted practice thereunder by the parties is controlling." There is no ambiguity here. Tools customarily furnished by skilled workmen are specifically excluded from what the Carrier will furnish.

Since there is no ambiguity in this Rule, the Carrier retained the right to enforce it. We find that the Organization has not met its burden of proof, and, consequently, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.