

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33161
Docket No. MW-32254
99-3-95-3-62**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Maintenance of Equipment Department employees, instead of B&B Mechanic Foreman G. Fitzgerald and B&B Mechanic J. Szczurouski, to perform B&B Subdepartment work (demolish and reconstruct a tool cage) in the Penn Coach Yard on September 20 and 21, 1993 (System File NEC-BMWE-SD-3344 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, B&B Mechanic Foreman G. Fitzgerald and B&B Mechanic J. Szczurouski shall each be allowed sixteen (16) hours' pay at their respective 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 were given due notice of hearing thereon.

As Third Party in Interest, the Joint Council of Carmen was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

On September 20 and 21, 1993 the Carrier assigned two Maintenance of Equipment Department employees to disassemble and reconstruct a tool cage in the Carrier's Penn Coach Yard that was originally assembled and constructed by Maintenance of Way Department employees. The work in question involved the use of an oxygen acetylene torch and welding equipment. In doing the work in question the employees to whom the work was assigned worked a total of 32 man-hours. The record also shows that on other occasions this type of work has been assigned to Maintenance of Equipment employees.

The Organization contends that the work in question belongs to Maintenance of Way Department employees under the Scope and Work Classification Rules agreed to by the parties and therefore when the Carrier assigned the work to other employees it violated its Agreement. The Carrier on the other hand argues that the Rules in question are general in nature and therefore the Organization must show in some other fashion that the work in question was reserved to its bargaining unit members, a burden it has failed to meet. In reply, the Organization asserts that the Carrier is precluded from making that argument because it failed to attach the Awards upon which it relies to its Submission to this Board.

The threshold question is thus whether we may examine the Carrier's assertion as set forth above because the Carrier admittedly did not include the Awards upon which it relies with its Submission to this Board. Although we regard its failure to do so as problematic, as described below, we do not believe that it is a fatal flaw. The record conclusively shows that on April 15, 1994 the Carrier's Division Manager of Labor Relations wrote to the Organization's Vice Chairman making the claim set forth herein. Thus, the Organization has not been surprised nor did it suffer any other prejudice or harm.

As noted above, the Carrier's failure to provide the Awards in support of its position prevents this Board from conducting a thorough reading of the Awards to ensure that they do in fact support the Carrier's position. However, we note that the Organization makes no contention that they do not, therefore we take both parties at

their word. Accordingly we find that we may examine the Carrier's argument on this point and, as we do, we find that the Organization's claim in this matter is without merit.

The Scope and Work Classification Rules in question reserve to the Organization's bargaining unit construction, repair and maintenance of ". . . other structures." It seems quite apparent that a tool cage is indeed an "other" structure. However, that does not end the analysis for the Carrier is equally correct that this reservation of work is indeed general in nature. Moreover, as held by the Third Division in Award 25523, in a case involving these same two parties, when the claim to the work in question is general, as is true in this case, it has been assigned to other employees.

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 25th day of March 1999.