

PARTIES TO DISPUTE: Baltimore & Ohio Railroad Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM: 1. Carrier violated the Scope of the Agreement by assigning Boilermakers to the construction and installation of a metal structure, which Carrier called a showcase, outside the Back Shop at South Cumberland, Md.
2. Carrier shall now compensate B&B Mechanics B. J. Twigg, R. G. Kerns, D. V. Stonebreaker and H. A. Westfall three (3) days pay, each, on account of the violation of the Agreement referred to in Part 1 of this claim.

OPINION OF BOARD: Prior to proceeding, it should be noted that this dispute involves a third party, namely the System Federation No. 30 AFL-CIO (Boilermakers). This Board, by letter to the General Chairman of said System Federation, dated December 11, 1973, advised that Organization of this dispute and invited him to be represented at a hearing on the matter, scheduled for January 15, 1974, or, in the alternative, to submit to this Board such statement as he might deem desirable and appropriate. The General Chairman was also furnished copies of the partisan submissions covering this dispute. By letter dated January 5, 1974, the System Federation General

Chairman furnished this Board with three copies of the Intervening Statement of the Boilermakers of System Federation No. 30 in lieu of making an appearance before the Board. Said Intervening Statement was made a part of the record in this case and was given due consideration by the Board in reaching its ultimate determination.

The basic issue in this dispute is whether the Carrier erred in assigning the construction of a locomotive shop display case to employees within the Boilermaker's craft instead of to B&B mechanics covered by the Maintenance of Way Agreement.

The record in this case leaves much to be desired for it contains several conflicting assertions as to the facts. For example, the Carrier stated that the display case was fabricated within the boiler shop area at the shops; the superstructure or framework was then moved by crane to the outside of the main plant building. The sheet metal covering was cut to size at the Bolt and Forge Shop which was then welded to the superstructure. All of this work was performed by the boilermakers. The holes for six pipe legs to support the display case were dug by Shop Laborers who also poured concrete around the four corner legs.

Petitioner, on the other hand, stated that, with the exception of the pipe supports, ". . . all the rest of the work of building this structure, was cut, fitted, and welded into place at the point of installation outside the Shop

building." Further, Carrier asserted that the physical attachment was made by B&B employees while the Organization stated that their B&B forces were not permitted to perform any phase of the work.

Insofar as the pouring of the cement for the corner posts is concerned the Carrier offered to compensate Claimants for that portion of the work - 30 minutes each at straight time rate - which was declined.

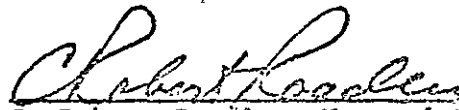
Additionally, a careful review of the record of handling on the property fails to show that the Organization cited any Rule of the Agreement as having been violated. For example, when the claims were denied by letter dated September 10, 1971 the Carrier advised, in part, "Your claim . . . is not supported by the agreement." Still, the ensuing correspondence from the Organization failed to rebut this statement by reference to any Rule of the Agreement. The only Rule reference is in the statement of claim alleging violation of the Scope of the Agreement. This is the identical Rule that was the subject of our consideration in AWARD NO. 1, of this Board, and the same principle pertains as in that Award. The Boilermakers of System Federation No. 30, in their previously referred to Intervening Statement, stated that Rule 71, Classification of Work, gives their employees the right to perform the disputed work. The only rebuttal, by Petitioner, to this assertion was that they do not agree.

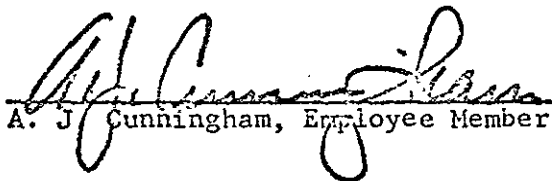
The rationale expressed by this Board in its AWARDS 1 and 2 is equally applicable in this case insofar as the obligation upon the Petitioner to perfect his claim is concerned.


In the light of the record before us, and for the reasons set forth above, it is our determination that Petitioner failed to meet the burden of proof necessary to sustain the claim. Mere assertions, denials, and allegations are not sufficient to satisfy the Burden of Proof doctrine.

AWARD:

That the Agreement was not violated; claim denied.


C. Robert Roadley, Neutral Member


A. J. Cunningham, Employee Member


L. W. Burks, Carrier Member

Baltimore, Md.
March 11, 1974