

BEFORE

PUBLIC LAW BOARD NO. 3863

PARTIES TO DISPUTE: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF
EACH CLAIM:

"Claim is hereby filed for all time made by: The work is being performed by Gang Nos. S792 and S142 of the Track Department working at South Hampton St. Yard, Boston, Mass. on 3/25/83 3/26/83 3/27/83 3/28/83 3/29/83 when they, in violation of Article No. 1 of the current effective Agreement, performed the following work: Installing crossings at grade (3/25/83 Fore 8 hrs and 4 men) (3/26/83 Fore and 4 men 8 hrs) (3/27/83 Fore 8 hrs and 4 men) (3/28/83 Fore and 4 men 8 hrs) (3/29/83 Fore and 4 men 8 hrs)"

THE FACTS: On five days in March 1983, Track Sub-department forces, using prefabricated plastic panels, installed grade crossings in the Carrier's South Hampton Street Yard, Boston, Massachusetts.

Seven Bridge and Building Sub-department (B&B)-employees who were working at the time with a B&B Composite Gang filed identical individual claims, alleging violation of Article I in the assignment of the work and seeking compensation for the "time made" by the Track employees. The claims were decided separately on the property. In oral argument before this Board, the seven claims were treated jointly as a single dispute. Since all claims arose from the same facts and present identical issues, they have been consolidated for purposes of disposition by this Board.

The Organization argues that the work in dispute belongs to the B&B employees. The argument rests on the following Carpenter position description in the Work Classification Rule, Article I of the basic Agreement:

- "4. Carpenter - Construction of repairs to or dismantling of structures made of wood or wood substitutes."

The work in dispute, the Brotherhood says, fell within the description by reason of the nature of the construction and the degree of expertise needed to handle the particular material and equipment required for the tasks involved.

The Carrier urges dismissal of the claims for want of merit. In support, it argues that: The claimants and the Brotherhood have failed to submit any proof whatever to support the bare allegation of contract violation. In any event, no violation of Article I occurred, because no exclusive right to the installation work accrued to B&B employees either from the fact of work listing under the Carpenter position classification or from the kinds of tools used to do the work. Traditionally, this type of essentially non-journeyman work has been performed by various classifications covered under the Scope Rule. In short, the work does not belong exclusively to any one employee group; the Brotherhood has not shown otherwise. Furthermore, even if the claims were sustained on the merits, the monetary relief sought could not properly be granted.

FINDINGS: The Arbitrator finds on the whole record and all the evidence that the carrier and each employee involved in this dispute are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over this dispute.

The Board further finds and concludes as follows on the record as a whole.

By asserting an exclusive right to the work for B&B employees, the Brotherhood has assumed the heavy burden of supporting its claim by substantial evidence of a significantly material nature. Thus it must present a reasonable and persuasive interpretation in its favor of the Work Classification Rule. This it would have to do by showing clear support for the exclusivity claim in the language of the rule, or in the way the rule has been traditionally applied system-wide over the years. We cannot possibly find on this record that the Brotherhood has met that burden.

The Brotherhood's interpretation of Article I has no acceptable support. The description of primary duties for purposes of position classification cannot properly be interpreted as a grant of an exclusive right to perform the work. This is the general view as to railroad agreements. More importantly, the Scope Rule of the applicable Agreement plainly expresses the parties' intention not to give such meaning to any classification. No exception is made for this particular position. This should be dispositive of the claims.

Even without regard to the Scope Rule, the Brotherhood has provided no persuasive basis for holding that this particular work was reserved exclusively to the B&B employees. It has not shown, by direct evidence of its own or by convincing rebuttal of the Carrier's assertions, that the particular type of work in question actually fell within the primary duties described for the Carpenter position. The use of tools normally associated with Carpenter duties is not sufficient, either in itself or against the Carrier's un rebutted explanation, to establish the merits of the claims. Finally, the Brotherhood has not produced any direct or rebuttal evidence of a traditional practice in favor of its contention.

The claim will be denied.

AWARD:

The claims in Cases Nos. 2 - 8 are denied.

Ed Claus
Neutral Member and Chairman

SCHWY
Carrier Member

W. C. Rye
Brotherhood Member
Dissent

November 25, 1985