

Award No. 37
Case No. 77

Public Law Board No. 2778

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and

The Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

On various dates between May 10 and June 1, 1978, Carrier violated the Schedule Agreement when it used Boilermaker Clyde Poling to perform the work of cutting holes and welding brackets so a safety chain could be installed on all platforms in the roundhouse in Cumberland, Maryland. Claimant, Carpenter R. G. Kerns, should be paid 20 hours at carpenter's rate because of that violation.

FINDINGS:

To prevail, Petitioner must prove by competent evidence, as distinguished from mere assertion, that the disputed work -- cutting holes and welding brackets to platforms in the roundhouse in order that safety chains could be installed -- belongs exclusively to Bridge and Building forces and cannot validly be performed by boilermakers.
Petitioner has not submitted sufficient evidence

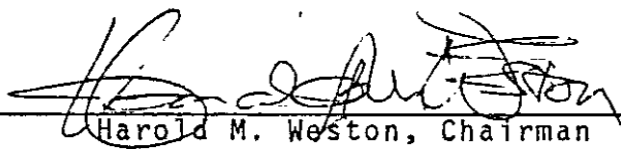
to sustain that burden of proof. The work in question does not affect the structural integrity of the roundhouse and has not been reserved exclusively for maintenance of way employees by any agreement or, so far as the record shows, established continuous practice. The evidence to which we have been referred is not sufficient to establish such a practice.

It was not a breach of the applicable agreement for boilermaker to devote 20 hours to cutting holes in, and welding brackets to, the platforms in the roundhouse.

In reaching our decision, we had considered with care the submissions and oral arguments of each party, including the Boilermakers who were duly permitted to appear as an intervenor.

AWARD: Claim denied.

Adopted at Baltimore, Md. July 13, 1984.


Harold M. Weston, Chairman


Carrier Member


Employee Member