SPECIAL BOARD OF ADJUSTMENT NO. 1016

Parties to the Dispute	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES and CONSOLIDATED RAIL CORPORATION	Case No. 22

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it used Track Department forces instead of Bridge and Building Department forces to install rubber grade crossings at Columbus, Ohio on September 30, October 1, 2, 3, 7, 8, 9 and 10, 1985 and at Urban, Ohio on December 2, 3, 4, and 5, 1985 (System Dockets CR-2268, CR-2272 and CR-2275 through CR-2282).

(2) Because of the aforesaid violation, Mr. R.N. Williams shall be allowed forty (40) hours of pay at the B&B Foreman's straight time rate and forty (40) hours of pay at the B&B mechanic's straight time rate; B&B Foreman J.K. Lafferty shall be allowed eighty (80) hours of pay at his straight time rate; B&B Mechanic M.G. Carmean [sic] shall be

allowed eighty (80) hours of pay at his straight time rate and B&B Mechanics S.A. McDade, C.T. Julian, C.D. Francis and J.D. Serio shall each be allowed forty (40) hours of pay at their respective straight time rates.

OPINION OF THE BOARD

On the days cited in the Statement of Claim, Carrier used Track Department forces to install rubber grade crossings at Columbus and Urban, Ohio. Ten claims were filed on behalf of individual Bridge and Building Department Foremen or Mechanics. Those ten claims were combined and presented to this Board as a single claim. The Organization contends that by Agreement and past practice, the work of installing wooden shims and rubber pads at crossings belongs to B&B Department employes and not track employes. Carrier asserts that the work in question does not accrue exclusively to B&B employes by systemwide practice nor is it assigned to any one group of employes by Agreement. Carrier's final argument is that all employes involved in the ten claims combined in this case were fully employed and under pay or on vacation. Thus, no monetary payment is due in any case.

This Board is once again confronted with an intra-Union dispute involving which class of employes within the M&W Union can perform certain work. While numerous arguments were presented by both parties in this dispute, the Board will first look to the controlling Agreement to ascertain what rights each party may have. If no Contract language can be found that applies to the dispute, we will then look to other concepts on which to base a decision.

In reviewing the record, the Board's attention is drawn immediately to paragraph 4 of the applicable Scope Rule. That Rule reads as follows:

> The listing of the various classifications in Rule 1 is not intended to require the establishment or to prevent the abolishment of positions in any classification. The listing of a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of this Agreement.

Based on the language of Paragraph 4, it is difficult to see how the Organization can argue that what took place in this instance was an Agreement violation for which compensation should be paid to fully employed workers.

The Rule clearly allows Carrier to assign the work of one class of employe listed under Rule 1 to another class. The only restriction on that right is that the assignment must not violate some other term of the Agreement. We see no other term of the Agreement that addresses this situation or that was violated in this instance.

The Board's position in regard to Paragraph 4 is bolstered by the fact that the Employes attempted through a Section 6 notice to obtain wording in the Scope Rule that would have restricted Carrier to assigning work just as the Organization contends it should have done in this case. The Organization was unsuccessful in that attempt. It can be concluded that if the current language restricted Carrier from assigning work as the Organization contends, no attempt to change the language would have been necessary. Based on the record before it, this Board must deny the instant claim.

AWARD

The claim is denied.

R.E. Dennis, Neutral Member

S. Powers, Employe Member

J. Burton, Carrier Member

June 17, 1992
Date of Approval