

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30064
Docket No. MW-29209
94-3-90-3-83

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Southern Pacific Transportation Company -
Eastern Lines

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- "1. The Agreement was violated when the Carrier assigned Car Department employes instead of Bridge and Building Department employes to remodel the Houston Division A&WE Supervisor's office at Englewood Yards in Houston, Texas from October 3 through November 4, 1988.
2. As a consequence of the aforesaid violation, Houston Division B&B employes W.D. Williams, J. Mayes and R. B. Fitzgerald shall each be allowed two hundred (200) hours of pay at the carpenter's straight time rate."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

The basic facts are not disputed. The Carrier utilized two Carmen to remodel a trailer (used as an office) which was formerly assigned to the A&W supervisor and which had been reassigned to the Mechanical Department. They removed one partition, built and installed lockers, built a cabinet on one end of the trailer, replaced both entrance doors and frames and applied new tile to the entire trailer floor.

It is well established that under a Scope Rule as the one in question, the Organization has the burden of showing that the work in question has been customarily and traditionally performed by employees it represents. In this connection, the Organization submitted several statements from B&B employees, one with 43 years' experience, asserting that they have always done the carpentry work on office and buildings at Hardy Street and Englewood yards. The statements went on to say that when B&B employees did no carpentry work, claims were filed and settled in favor of the Organization. The Carrier, throughout the handling, asserted, without any documentary evidence, that the work had not been exclusively done by members of the Organization.

The Board, in weighing the competing assertions as to the past practice of others doing carpentry work at this location, must conclude that the Organization has satisfied its burden of proof. The employee affidavits are more worthy of consideration than the bald assertions of the Carrier. The Carrier must realize that, in the face of such affidavits, when it asserts, as an affirmative defense, that other crafts have performed certain work, it must come forth with more than mere assertion. It is in the unique position, as the party having made those work assignments, to show when the work was done and why it was assigned to the other crafts.

The remaining question is one of remedy. The Carrier has not convinced the Board that this work could not have been assigned to the Claimants and, as such, a loss of work opportunity exists. However, the record shows that the total work time on the project was 320 hours. Accordingly, the claim is sustained for a total of 320 hours to be divided equally among the Claimants.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.