NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

John P. Devaney, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM.—

"Claim of employes that carrier violated Rule 21 of the current agreement when they assigned water proofing employes to replace ironworkers on the work of placing steel ballast stops on the Park Avenue Viaduct, New York City."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties:

"Rule 21 of the agreement between the New York Central Railroad Company and the Brotherhood of Maintenance of Way Employes, effective December 1, 1929, reads:

" 'Employes will be confined to work of their respective classifications insofar as consistent with economical maintenance and construction, but where required the foreman will have the right to assign any one to any work there is to be done, that, in the foreman's judgment, he is competent of doing. But this shall not be applied to require men of one class to regularly perform the work of another class.'

"In 1932 a design of steel ballast stop was adopted for application to the Park Avenue Viaduct to keep the ballast away from the girders and thus prevent corrosion, etc. This design of ballast stop consisted of a single steel plate which required fastening to the steel girder by the welding process. Iron workers were used to apply these plates.

"In 1933 an improved type of ballast stop was adopted consisting of two steel plates with two adjustable bolts in the middle. The ballast stops of this improved type are set in the trough, spread apart with wedges and held together in the spread position by tightening the two bolts which are already inserted in the bolt holes.

"Hearing is not being requested by either party, unless the Board itself desires to have us appear for questioning."

An agreement between the parties bearing effective date of December 1st, 1929, was placed in evidence, and Rule 21 thereof was specifically cited in Joint Statement as bearing upon the determination of the dispute.

Rule 11 is also mentioned by the employes. Rule 11 reads as follows:

"An employe working on more than one class of work on any day, will be allowed the rate applicable to the character of work preponderating for the day, except that when temporarily assigned by the proper officer to lower rated positions, when such assignment is not brought about by a reduction of force or request or fault of such employe, the rate of pay will not be reduced.

"This rule not to permit using regularly assigned employes of a lower rate of pay, for less than half of a work day period, to avoid payment of higher rates."

POSITION OF EMPLOYES.—Employes contend that the work of placing the ballast stops is ironworker's work and should be performed by that class of employes.

POSITION OF CARRIER.—The carrier contends that the work is not ironworker's work and can be performed by any class of employes, and has the following to say in regard to Rule 21, quoted above:

> "Notwithstanding that applying the ballast stops requires no special qualifications, if it should be held to be work of ironworkers, under Rule 11 of the agreement waterproofing employes would only be entitled to the higher rate when such work requires more than 50% of their time. There could be no justification for displacing waterproofing men by ironworkers, when the waterproofing work represents all but a small fraction of the time, and the ballast stop work is only performed spasmodically."

The carrier also lists a tabulation showing the number of days worked by different groups of employes performing this work during the year of 1933–34.

OPINION OF BOARD.—The issue in this case is whether or not the action of the carrier in using water-proofing employes instead of ironworkers to apply the improved type of ballast stops is in violation of Rule 21, insofar as it assigns work regularly belonging to one class of employes to another to which the work does not belong.

The facts in this case are in dispute and the evidence in conflict. The record does not permit a full understanding of the facts and needs amplification as well as clarification. We are of the opinion that the ends of justice as between the parties to this dispute would be best served by remanding the case for disposition on the property where all facts are available or may be ascertained.

FINDINGS.—The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That the carrier and employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein;

That the parties to said dispute waived right of appearance at hearing thereon; and

That the claim should be remanded for full investigation of facts and for settlement on the property if possible.

AWARD

Claim remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 7th day of May, 1937.