

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim presented by the System Committee of the Brotherhood:

(1) That the Carrier violated Agreement in effect by assigning eleven Store Department employees to work eight hours at time and one-half rate on Sunday, June 10, 1945, and eight Store Department employees to work two and one-half hours at time and one-half rate on Monday, June 11th, in the performance of certain Bridge and Building work;

(2) That Bridge and Building employees whose names are first listed shall each be paid at their respective rates of pay for eight hours at time and one-half rate on Sunday, June 10, 1945;

Name	Occupation
H. G. Dybvik	Assistant Foreman
John Hoston	1st Carpenter
Paul Dybvik	1st Carpenter
J. L. Pearson	1st Carpenter
Claus Solheim	1st Carpenter
Ben Larson	1st Carpenter
J. J. Karnowski	1st Carpenter
Paul Novotny	2nd Carpenter
W. E. Anderson	2nd Carpenter
A. M. Novotny	Helper
R. A. Warnberg	Truck Driver

and that those whose names are listed below shall each be paid at their respective rates of pay for two and one-half hours at time and one-half rate on Monday, June 11, 1945:

H. G. Dybvik	Assistant Foreman
John Hoston	1st Carpenter
K. L. Pearson	1st Carpenter
Claus Solheim	1st Carpenter
Ben Larson	1st Carpenter
J. J. Karnowski	1st Carpenter
Paul Novotny	2nd Carpenter
R. A. Warnberg	Truck Driver

EMPLOYES' STATEMENT OF FACTS: On Sunday, June 10, 1945, eleven Store Department employees at Brainerd, Minnesota were assigned and worked eight hours at time and one-half rate in connection with construction of a certain platform or runaway, in the Brainerd Shop Yard. On Monday, June 11th, eight Store Department employees were assigned and worked two

The Carrier submits statement from District Storekeeper Sewall, in charge of Brainerd Store, and statement from Bridge and Building Supervisor Riley, in charge of the Lake Superior Division, on which Division Brainerd is located. Attention is called to the fact that District Storekeeper Sewall states that the work performed in this instance is work that is customarily performed by Store Department employees. Attention is also called to the statement by Bridge and Building Supervisor Riley to the effect that the work in question is not work usually performed by B&B Department employees.

The claim presented is in behalf of an assistant B&B foreman, carpenters, a helper and a truck driver. As no carpenter work was performed in connection with placing this temporary runway, it is obvious that there can be no foundation for a claim that carpenters should have been used on this work; neither is there any foundation for a claim that a carpenter helper or a truck driver should have been used. So far as the truck driver is concerned it may be said that all that was involved here was moving Store Department material from one location to another in the Store Department, and this is work that is customarily performed by Store Department employees.

The claim is presented for 8 hours at time and one-half rate on Sunday, June 10th, for 11 B&B Department employees. This claim, on its face, has no foundation as the claimants were not required to work on Sunday. Rule 27 (a) of the Maintenance of Way Agreement reads:

"Except as otherwise provided herein, employees who are required to work on Sundays and the following holidays, i.e., New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided that when any of the above holidays fall on Sunday, the day observed by the State or Nation or by proclamation shall be considered the holiday) shall be compensated therefor at the rate of time and one-half."

That rule covers "work" performed. No work was performed by the claimants on Sunday, June 10th.

The claim also covers Monday, June 11th, 8 men having made claim on that date. These employees all worked in their regular assignment on June 11th, having performed 10 hours of service on that date. Therefore, there can be no foundation for a claim for loss of time on June 11th.

The Carrier has shown that the work in question is not B&B Department work and has never been so recognized; that this work has customarily been performed by Store Department employees. Consequently it is plain that there is no foundation for this claim.

OPINION OF BOARD: The Carrier assigned the building of a temporary runway for the use of the Store Department to Store Department employees. Employees in the Bridge and Building Department claim the work belonged to them and seek compensation therefor.

The Carrier maintains one of its main shops and stores at Brainerd, Minnesota. Portable crane-trucks used in the stores to handle materials, were operated over dirt roads which were unsatisfactory and arrangements were made to build new concrete runways. Pending the construction, a temporary runway, approximately 7 feet wide and 140 feet long was constructed of second hand sleepers and car sills. The work consisted of excavating for the sleepers and placing the car sills crosswise on the sleepers. No sawing or spiking was done except that it was necessary to saw four sills and spike the same number because of their warped condition. There is evidence in the record that Store employees have performed this type of work for the past twenty-five years. On the other hand, there is evidence in the record that complaints have been made by the Bridge and Building employees protesting their doing it. There is also a letter in the record antedating the present dispute in which the Superintendent of the Carrier states that the practice of using Storeroom employees in doing Bridge and Building employees' work at Brainerd has been discontinued.

Whether the work belonged to Store or B&B employes is not determinable solely from its temporary or permanent character. Clearly, there is bound to be temporary B&B work performed in and around the Stores Department of such magnitude that it belongs solely to B&B employes. On the other hand there is bound to be permanent B&B work in the Stores Department in such small amounts that it can well be treated as incidental to the work of employes in the Stores Department. While there is much that can be said on both sides of the question, we are of the opinion that the excavating for and the laying of sleepers and sills for a temporary runway 7 feet wide and 140 feet long is work within the scope of the Agreement of the Maintenance of Way employes. While we think the temporary bracing or planking of runways and platforms to meet the necessities of the occasion in handling store materials, or even the making of minor permanent repairs, are incidental to the work of Store employes and may properly be performed by them, we do not think it can be said that work of the magnitude here described can be incidental to the work of employes in the Stores Department. There is evidence of a small amount of sawing and spiking being done. While we do not deem it sufficient to provide a proper basis for determining to which group the work belonged in the present case, it does tend to support the position taken by the B&B employes. The claim will be allowed for the number of hours shown by the joint check to have been worked on the runway here involved.

The penalty rate for work lost because it was given to one not entitled to it under the Agreement, is the rate which the occupant of the regular position to whom it belonged would have received if he had performed the work. Awards 3193 and 3271. If Claimant had been permitted to perform the work he would have received time and one-half for the Sunday work and time and one-half for the overtime work on Monday. The latter for the reason that the Monday work on the platform commenced at 7:30 A. M. and terminated at 8:00 P. M. If the employes entitled to the work had performed it, they, too, would have been entitled to two and one-half hours at the overtime rate. Consequently, the claim for two and one-half hours at the overtime rate on Monday is properly sustainable.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the 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; and

That the Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1946.