

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE BEAVER, MEADE AND ENGLEWOOD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Section Laborers E. H. Pierson and O. R. Mayes, Forgan, Oklahoma, shall each be paid the difference between what they received at the rate applicable to section laborers and that which they should have received at the rate applicable to bridge and building helpers while assigned and engaged in unloading and storing bridge and building timbers on November 3, 4, and 6, 1945.

EMPLOYES' STATEMENT OF FACTS: The Beaver, Meade & Englewood Railroad Company is controlled and operated by the Missouri-Kansas-Texas Railroad Company—Missouri-Kansas-Texas Railroad Company of Texas. The Beaver, Meade & Englewood Railroad Company does not employ bridge and building employees but all of its bridge and building work is performed by bridge and building employees employed by the Missouri-Kansas-Texas Railroad Company—Missouri-Kansas-Texas Railroad Company of Texas.

On November 3, 4, and 6, 1945, Section Laborers E. H. Pierson and O. R. Mayes, Forgan, Oklahoma, employed by the Beaver, Meade & Englewood Railroad Company were assigned and engaged in unloading and storing bridge and building timbers.

Agreement effective July 1, 1945 between the Missouri-Kansas-Texas Railroad Company—Missouri-Kansas-Texas Railroad Company of Texas and the Brotherhood of Maintenance of Way Employees, and agreement effective January 1, 1938 between the Beaver, Meade & Englewood Railroad Company and the Brotherhood of Maintenance of Way Employees are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: As stated in Employees' Statement of Facts, the Beaver, Meade & Englewood Railroad Company is controlled and operated by the Missouri-Kansas-Texas Railroad Company—Missouri-Kansas-Texas Railroad Company of Texas. In fact, the Beaver, Meade & Englewood Railroad Company is operated as a part of the Wichita-Northwestern District of the Missouri-Kansas-Texas Railroad Company of Texas. Thus, the officers of the Wichita-Northwestern District of the Missouri-Kansas-Texas Railroad Company of Texas have the same jurisdiction over the Beaver, Meade & Englewood Railroad Company as they have over the Wichita-Northwestern District of the Missouri-Kansas-Texas Railroad Company of Texas.

The rule clearly provides for and authorizes the use of section forces to assist bridge and building gangs in the handling of heavy materials. When so used it is obviously not bridge and building work but section work only and section rates of pay apply. If that were not true and it was the intent of the rule section forces would be paid on any other basis certainly the rule would have been worded to that effect.

This rule was agreed to effective July 1, 1945, and prior to that time no complaints or contentions were made that unloading, stacking, and trucking or transporting material with section forces to the location where it was to be used or applied constituted work generally recognized as bridge and building work. No such complaint or contention was made during the negotiation of the rule, and none has been made since that time, until this case arose, notwithstanding the fact that it has been the custom and practice from time immemorial to use section forces to unload, truck and stack all kinds of material. The only complaints and contentions of the Organization prior to this case have been account regularly attaching and using laborers on bridge and building gangs for bridge and building work, and the intent and purpose of the rule, obviously and unquestionably, was to eliminate the use of laborers for that purpose or in applying material when and where it is used, except in the handling of heavy materials, digging and backfilling, as provided for and authorized by the rule. It is therefore evident it was not the intent and understanding at the time the rule was agreed to, that unloading, trucking and stacking material for use by bridge and building gangs and others is bridge and building work exclusively. "Assistance to Bridge and Building gangs in the handling of heavy materials," as that term is used in that rule, obviously means assisting bridge and building gangs in the application of such material, or bridge and building work. Unloading, trucking and stacking material, for use by bridge and building gangs and others, has always been considered and recognized as work that may be and is performed by various classes of employees.

In this particular case section forces were simply used to unload and stack material to release the cars on which it was loaded and they did not handle it for the purpose of applying it at the location where it was actually used as contemplated by the rule. The Carrier's interpretation of the rule is in accordance with the recognized and accepted practice and understanding that has been observed in the past and the position of the Petitioner that unloading and stacking material for use in construction and maintenance of bridges and buildings is bridge and building work or generally recognized as such, is unreasonable, unwarranted and not in accordance with the true intent, meaning and understanding of the rule.

The Petitioner, as this record and submission shows, also recognized that the use of Section Foremen with section laborers to unload bridge and building material, without the presence of bridge and building gang is not in violation of the agreement and claim of Section Foreman J. R. Lee was therefore improper and invalid when he withdrew that claim. That being true it follows the use of Section Laborers Pierson and May to unload bridge and building material without the bridge and building gang being present to assist is also not in violation of the agreement and their claims are improper and invalid and should be denied.

The Carrier respectfully requests that the Board deny the claim.

OPINION OF BOARD: Unloading and storing bridge piling is Bridge and Building work.

"Occasional assistance" to Bridge and Building gangs in the handling of heavy materials is permitted laborers under Rule 11 of the Missouri-Kansas-Texas Agreements, which controls Bridge and Building work on Carrier's property.

The facts disclose that the unloading of piling was not performed as "assistance" to any Bridge and Building gang, but was done by the section gang acting alone, and for the purpose of releasing cars.

Since the work done is not within the exceptions allowed, and since the Missouri-Kansas-Texas Agreements governs (See Awards 2655, 3489), Claimants are entitled to an affirmative finding.

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 Employees involved in this dispute are respectively carrier and employees and 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILWAY ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1947.