

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) That the Carrier violated the Agreement dated November 15, 1943 when it assigned carpenters to perform steel bridgemen's work on an overhead steel crane at Colonie Shops during the period April 26 to May 15, 1948, both dates inclusive.

(2) That the carpenters assigned to perform the work referred to in part (1) of this claim be paid the difference between what they did receive at the carpenter's rate and what they should have received at the steel bridgeman's rate for all time so engaged.

(3) That the six (6) senior bridgemen on the seniority district be allowed pay at the steel bridgeman's rate for the same number of hours as was consumed by carpenters in performing the work referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier has a large outdoor gantry type crane at Colonie, New York. During the period April 26 to May 15, 1948, inclusive the Carrier assigned a crew of Bridge & Building Carpenters to make certain repairs to this crane. The work performed by these carpenters was as follows:

The belts holding the running rail on the top of the runway of the crane were burned off. The old rail taken out and lowered to the ground. The new rail raised to the top of the runway and set in place by new clips and bolts.

In addition to the above described work these carpenters jacked up the steel legs supporting this runway and placed shims under these legs in order to accomplish a leveling up of the runway of this crane.

The shims inserted under these supports were all steel shims.

The Carrier maintains a separate class of employees identified as steel bridgemen who customarily and ordinarily make all repairs to the Carrier's steel bridges and structures. The Steel Bridgemen's crew was in existence on the Carrier's property at the time this instant claim arose. The Employees have contended that this referred to work should have been assigned to the members of the Steel Bridge Gang instead of the B&B Carpenters.

The Carrier has denied the claim.

Therefore, under the provisions of the above quoted rule these carpenters who performed the work in question should have been compensated at the rate of a steel bridgeman.

We further contend that the six (6) senior steel bridgemen who should have been assigned to this work because of their seniority rights should now be compensated for an equal number of hours as was paid the six (6) carpenters who performed this work.

We contend that the facts in this instant docket clearly show that the Carrier violated the effective agreement and that our claim should be sustained.

CARRIER'S STATEMENT OF FACTS: Carpenters were used to install new rails on runways of crane at Colonie.

POSITION OF CARRIER: In reviewing this type of work, our files indicate that carpenters, not steel bridgemen, since 1924 or before, have performed the duty of installing new rails on crane runways at Colonie, N. Y. That this service in the past has always been performed by carpenters has been acknowledged by the Committee.

(Exhibits not reproduced).

OPINION OF BOARD: During the period from April 26 to May 15, 1948, Carrier assigned carpenters to work on repairs to a gantry type crane at Colonie, New York. The work performed consisted of burning off the bolts holding the running rail on top of the runway of the crane, taking out the old rail and lowering it to the ground and raising and setting the new rail in place by new clips and bolts. As well, the carpenters jacked up the steel legs of the crane and placed steel shims under the legs to level up the runway. The Employees claim that the work should have been assigned to steel bridgemen who customarily make all repairs to Carrier's steel bridges and structures. Employees cite the Seniority Rules and Rule 18 (Composite Service) in support of the claim. Carrier argues that the work was properly assigned to carpenters since they have performed this same type of work at Colonie, New York, for the past 24 years.

The effective Agreement contains no Classification Rules; the work of particular positions are, therefore, not described therein. No descriptive duties of the position of carpenter or steel bridgeman have been cited in the record. The Agreement merely lists titles of positions.

Generally speaking, titles are an uncertain guide to what the actual duties of a position are. Yet, if the Scope and Seniority Rules are to have any force or effect, it must be presumed that the parties intended that certain work would accrue to the positions listed in the Agreement or otherwise established, even though they are only designated by title. Even when the duties of particular positions are specifically described, the work accruing to such positions cannot be categorized with mathematical accuracy. There is bound to be some overlapping in the work performed by different crafts. However, we do know that by common acceptance and usage a painter doesn't lay brick, and a plasterer doesn't do structural steel work. It is commonly and generally accepted that carpenter's work is done with different types of building materials than steel workers'. They use different tools and have different skills. Generally speaking, the steel workers' job is more hazardous than the carpenters'. (In the absence of specific description of the duties of the various crafts or positions listed in the Agreement or otherwise established, it must be presumed that those functions generally known to be a part of the work of the craft was in the contemplation of the parties in the writing of the Agreement. Consequently in listing positions by title, with no descriptive duties, it is a reasonable conclusion the parties intended that such work as is clearly, ordinarily and commonly performed by persons working under such occupational titles, would accrue to the holders of the positions listed. Where it cannot be determined with certitude whether certain work clearly accrues to a particular position when, of course, the practices on the property become material.

In this case, it is clear that the work done was on an open work steel structure of some height and all the materials used in the repair were of steel. So far as appears from the record, no tools commonly used by carpenters in the performance of their usual tasks were used. It was clearly not carpenters' work and, in our opinion, clearly the work of steel bridgemen. The assignment of the work to the carpenters, in our opinion, was in violation of the clear terms of the Agreement. The asserted practice, therefore, cannot defeat a claim that the Agreement was violated. See Award 4077 wherein it is stated "There is persuasive evidence in the record that section men have performed the type of work here involved as a part of their work in the past. Such proof may constitute an effective bar to retroactive reparations but it cannot change the express provisions of the Agreement".

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 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 RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of March, 1950.