Award No. 5043
Docket No. MW-4936

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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

(1) That the Carrier violated the effective agreement on October 21, 22 and 23, 1948, and specifically Rule 54, when it assigned Section Laborers at Long Pine, Ainsworth and Johnstown to remove and install stock car double decking and refused to compensate them for such work at carmen's rate of pay;

(2) That Section Laborers Elmer Boyd, Newton Blesh and Grady Terry be paid the difference between what they received at section laborer's rate of pay and what they should have received at carmen's rate of pay for a period of 18 hours each while they were assigned to such duties by the Carrier;

(3) That Section Laborers Glen Sawyer, Jake Groves and Joye Hamilton be paid the difference between what they received at section laborer's rate of pay and what they should have received at carmen's rate of pay for a period of 9 hours each while they were assigned to such duties by the Carrier.

JOINT STATEMENT OF FACTS: On October 21, 22 and 23, 1948, employes represented by the Brotherhood of Maintenance of Way Employes were required to install stock car double decking. While so engaged at the direction of the Carrier, they were compensated at section laborer's rate of pay.

Section Laborers Elmer Boyd, Newton Blesh and Grady Terry were each assigned to the above referred to duties for a period totaling 18 hours.

Section Laborers Glen Sawyer, Jake Groves and Joye Hamilton were each assigned to similar duties for a period totaling 9 hours.

Agreement dated January 1, 1947 is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: A rule governing the method of compensating employes who are assigned to perform composite service is contained in the effective agreement and is identified as Rule 54. Rule 54 reads as follows:

tention by maintenance of way employes or their representatives that compensting the employes for such work on basis of their regular rates of pay was in violation of schedule rules or agreements.

Further, in regard to the present contention of the Brotherhood of Maintenance of Way Employes that the removal and installation of stock car double decks is work coming within the scope of schedule agreement applicable to carmen: In discussion of this case with the Director of Personnel on April 7, 1949, the General Chairman, Maintenance of Way organization, indicated he had discussed the matter with the General Chairman of the carmen's organization, who had advised it was his position that the installation and removal of stock car double decks was work belonging to employes of the carmen class. It is a fact that in April 1947 the General Chairman of the carmen's organization presented to the Superintendent Car Department a claim in favor of carmen based on a contention that the use of section laborers to install double decks in a stock car at Casper, Wyoming in February 1947 was in violation of the provisions of federated craft schedule rules applicable to carmen. Under date of June 18, 1947 the Superintendent wrote the General Chairman denying the claim. Evidently he accepted the decision denying the claim as nothing further has been heard from him in regard to the matter.

It is the position of the carrier that the removal and installation of stock car double decks is not work coming within the scope of other working agreements as referred to in rule 54, maintenance of way schedule. It is also the position of the carrier that in consideration of the established and recognized practice to use track forces to remove and install stock car double decks at outside points, such as Long Pine, with compensation at their regular rates of pay, that the section laborers were properly compensated at their regular rates for their services in connection with the removal and installation of stock car double decks at Long Pine on October 21, 22 and 23, 1948. It is the further position of the carrier that the claim that the section laborers be compensated at carmen's rate of pay is not supported by the provisions of schedule rules applicable and that such claim cannot properly be sustained.

OPINION OF BOARD: Claimants were section laborers within the Maintenance of Way Agreement. On October 21, 22 and 23, 1948, they were required to remove double decking from stock cars and later to install it. They were compensated at section laborer's rate of pay. They claim the work was that of carmen and demand compensation at the carmen's rate of pay. The carrier contends that section laborers may be assigned to perform this work and be compensated at section laborers' rate.

The Organization contends that this work belongs to carmen under the Carmen's Agreement and cites a letter of the general chairman of the carmen in support thereof. While a statement of a general chairman claiming the work would not be conclusive, the letter in question contains statements which cast doubt on the validity of the claim that this work in this carrier is exclusively that of carmen. The general chairman of the carmen stated:

> "This work has been recognized as work coming under our jurisdiction and as far as is known to me is being performed by our people at all points where we have carmen employed.
>
> "Will confess, however, that from time to time section men have been called upon to perform some of this work at remote stations where we do not have any men employed or possibly where we have but one man on duty."

The admissions that the work is performed by our people (carmen) at all points where we have carmen employed and that section laborers have been called at remote stations when we do not have any men employed, is consistent with the contention of the carrier that it has been the practice for many years to use section laborers at remote stations in the performance

of this work at the section laborers' rate. The record is replete with instances when this has been done without complaint by the Maintenance of Way Organization. The Carmen's Agreement does not spell out the work as that of carmen. The work is not inspection or repair of cars as contended by the Employes. It is work incidental to the particular use to which the car is to be put. We fail to find evidence to sustain a finding that this work is the exclusive work of carmen. Whatever it may be on other carriers, the practice on this carrier has been to use section laborers at outlying points to do this work at section laborers' pay. The Maintenance of Way Organization appears to have made no objection throughout the years. There being no express and exclusive assignment of the work within the scope of another working agreement, the practice cannot be said to have been nullified by agreement. The contention of the carrier that an enforceable practice exists is sustained.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 22nd day of September, 1950.