# Award No. 5870
# Docket No. MW-5754

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**John W. Yeager, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood, that:

(1) The Carrier violated the effective agreement when they assigned Section Laborers Leo H. Gray, Robert J. Clark and J. L. Hannan Jr., the duties of pouring Amulco Emulsion in cracks in ties on Red River Bridge and compensated them for service rendered at the Section Laborer's rate of pay;

(2) Leo H. Gray, Robert J. Clark and J. L. Hannan Jr., be paid the difference between the rate recieved as Section Laborers and what they should have recieved at the Bridge and Building Helper's rate of pay for the time consumed on October 20, 1950 and October 23, 1950, in performing the work referred in part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** Section Laborers Leo H. Gray, Robert J. Clark and J. L. Hannan Jr., were assigned by the Carrier to the work of filling cracks in Bridge ties, with Amulco Emulsion. This service was performed on October 20, 1950 and October 23, 1950.

The installation and renewal of Bridge ties and all other work incidental thereto, such as framing, fitting, etc. is exclusively assigned to Bridge and Building employes. Bridge ties are generally recognized by the Railroad industry as being Bridge and Building material.

Claim was filed in behalf of the aforementioned Section Laborers for the difference between what they recieved at the Section Laborers rate and what they should have received at the Bridge and Building Helper's rate.

Claim was declined.

This agreement in effect between the two parties to this dispute dated September 1, 1949 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** Rules 1, 2 and 3 of Article 1, read as follows:

B&B mechanics rate for these section men but are requesting that they be compensated at rate of B&B helper's rate."

The fact that this work was performed on a bridge does not establish the work as B&B work. All work on bridges is not performed by B&B employes nor is all such work the exclusive work of B&B employes. The character or nature of the work involved in this instance was not skilled or semi-skilled bridge and building work, but was unskilled labor. No repairs of any kind were being made to the bridge by either B&B or track forces at the time this work was performed. Filling cracks in ties in the track structure is the same work on track on bridges as track on embankments and fills or in cuts. No skill beyond that of an unskilled laborer is required for such work. Certainly any ordinary track work on bridges should be done by track labor. Section forces regularly line and guage tracks, install guard rails, change out rails and perform other duties on track structure on both steel and trestle bridges just as they do on tracks on embankments and at all other locations.

As no showing of any kind has been made by the Petitioner that this work is generally recognized as B&B work and the burden of making such showing is his and not the Carrier's; as no showing of any kind has been made by the Petitioner that any repairs were made to the bridge; and as the ties on the bridge are an integral part of the track structure the same as ties on embankments and in cuts or ties not on bridges, it is unmistakably clear that this work is not B&B work but is track work and no agreement violation as alleged by Petitioner has been established.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employes or their duly authorized representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** There is no dispute here as to the facts. Section laborers on whose behalf the claim is made were used to pour emulsion, or in other words a filler, in cracks in ties on a bridge and were compensated at their rate of pay. The Organization says that this was work belonging to Bridge and Building employes and that the section laborers should have been paid the Bridge and Building Helpers' rate.

If it did so belong then of course the claim is a valid one, otherwise not. This is the only question for determination.

The Rules do not define fith any degree of certainty either the work of the Bridge and Building employes or of the section laborers. Likewise evidence of past practice fails to provide a clear line of demarcation between the work of the two classes. Also cited precedents of this Division fail to establish any such line. The most that can be said on the record is that if this was an incident of Bridge and Building construction or maintenance it was work of Bridge and Building employes. If it was track maintenance it was not.

Analysis of the situation leads to the conclusion that this work did not belong exclusively to Bridge and Building employes. The analysis on which the conclusion is based is the following: In order to have a railroad over a river there must be a bridge. Under the Rules, if not the original construction, maintenance and reconstruction of that bridge is Bridge and Building work. A railroad track is a combination in line of rails and ties and other component elements designed to carry trains. A bridge is a structural support designed to sustain a component and unserved segment of track from a line or unit of

track. The ties do not, anymore than do the rails or spikes, lose their idenity as component elements of a track by the fact they appear upon a structure which supports and sustains the track. If the idenity is not lost then it may not well be said that the work of preserving them does not properly belong to employes whose duty and function it is to preserve and maintain the track.

**FINDINGS:** The Third Division of the Adjustment Board, after giving 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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1952.