

Award No. 5946

Docket No. MW-5822

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David R. Douglass, Referee

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**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, that:

(1) The Carrier violated the effective agreement when it failed to assign carpenters and carpenter helpers to perform the duties required in connection with the dismantling of the water tank at Nineveh, during the week of October 10, 1949, and in lieu thereof, assigned to work to Mason Gang No. 6;

(2) The senior carpenters and carpenter helpers holding seniority on the district where the dismantling work was performed be allowed pay at their respective straight time rate for an equal proportionate share of the hours consumed by the masons and mason helpers who were assigned to the work referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** During the week of October 10, 1949, the Carrier assigned employes of Mason Gang No. 6 to the work of dismantling a water tank at Nineveh, N. Y., consuming approximately 240 man-hours.

A claim was filed in behalf of senior carpenters and carpenter helpers for compensation for an equal proportionate share of the total man-hours consumed by the Masons and Mason Helpers because of the Carriers improper assignment.

Claim was declined.

The agreement in effect between the parties to this dispute dated November 15, 1943 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** As previously stated in the Employees' Statement of Facts, Mason Gang No. 6, was assigned by the Carrier to perform the work of dismantling a water tank at Nineveh, New York.

The Employees contend that the above referred to work should have been properly assigned to employes holding seniority as Carpenters and Carpenter Helpers.

Carrier does not believe that either Rule 2 or 3(a) quoted herein and relied upon by Employes supports the claim for the work to be performed exclusively by the carpenters and carpenter helpers. Since there is no rule to support this claim, Carrier believes that the practice used prior to the instant case should govern. The mason gang had, on previous occasions, dismantled similar types of tanks at Cobleskill, Altamont, Delanson, and Meadowdale. When necessary, a carpenter, as in the present case, had assisted the mason gang at the latter points.

Under the circumstances, Carrier believes the preponderating work was that which had in the past been performed by employes of the mason gang and respectfully requests denial of claim.

Management affirmatively states that all matters referred to in the foregoing have been discussed with Committee and made part of the particular question in dispute.

**OPINION OF BOARD:** The Carrier employed a mason gang to dismantle a water tank. A carpenter was assigned to the gang and he, assisted by mason helpers, removed the roof from the tank. After this was done, a cable was placed around the tank and the bolts and nuts, holding the permanently affixed steel bands, were cut with a torch. The tank was pulled down by use of a block and tackle and then the crew tore down the supporting stone piers and foundation. Claim is made on behalf of senior carpenters and carpenter helpers for compensation for an equal proportionate share of the total man-hours consumed by the masons and mason helpers.

We are of the opinion that the work of removing the roof from the tank was properly the work of a carpenter and carpenter helpers. A carpenter was used in this phase of the dismantling, but his helpers were mason helpers. The exact mechanics of the work involved in removing the roof are not fully before us, but the Carrier recognized the right of the carpenter to that phase of the dismantling by its statement on page 18 of this docket where it was said, "It is the customary practice for a carpenter to be among the personnel of a mason gang. Such an employe takes care of any carpentry work necessary on a given project. In this case the carpenter was employed in the removal of the roof of the tank. It is not disputed that mason helpers also assisted. . . ."

Thus it becomes clear to us that mason helpers were improperly used in assisting the carpenter with the roof removal.

The remainder of the work was not such as could be classed as exclusive carpenter and carpenter helper work. It did not require any particular carpentry skill nor any use of the usual carpenter tools. It was merely cutting metal so that the tank could be pulled down without any thought of salvage.

From the facts, as we find them, we determine that an equal number of senior carpenter helpers should be paid for the same amount of time as was spent by the mason helpers who assisted the carpenter in removing the roof.

**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 by the Carrier to the extent shown in this *Opinion*.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 19th day of September, 1952.