Award 5947

Docket No. MW-5823

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David R. Douglass, 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 effective agreement when it assigned masons and mason helpers to perform carpenter's work at Bridge No. °96.55, on October 6 and 12, 1949, while employes holding seniority as carpenters and carpenter helpers were laid off in force reduction;

(2) That the same number of employes holding seniority as carpenters or carpenter helpers be allowed pay at their respective straight time rate for an equal proportionate share of the hours consumed by the masons and mason helpers assigned to perform the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Prior to making repairs to the super-structure of this Carrier's Highway Bridge No. °96.65, the Carrier determined that additional temporary support would be required during the progress of the repair work.

Carrier therefore, assigned its Carpenter Gang No. 1, to erect the necessary supports on September 12, 1949. In order to facilitate the work, Carpenter Gang No. 1 was provided with work train service.

Upon completion of the aforementioned repairs, the Carrier assigned Mason Gang No. 6 to remove the temporary supports which had been installed by Carpenter Gang No. 1, this service being rendered by the Mason gang on October 6, 1949 and October 12, 1949.

On October 6, 1949 and October 12, 1949, there were furloughed employes holding seniority as Carpenters and Carpenter Helpers respectively.

A claim was filed requesting that the same number of employes holding seniority as Carpenters or Carpenter Helpers be allowed pay at their respective straight time rate for an equal proportionate share of the hours consumed by the Masons and Mason Helpers assigned to remove the temporary bridge supports.

Claim was declined.

Carrier's business should be theirs, that their rights remain except as may be modified through negotiation."

In Award 604, your Board stated:

"This board, and others, have held, in many decisions, that work of a class covered by the agreement belongs to the employes upon whose behalf it was made and cannot be delegated to others without violating the agreement."

In Award 1314, your Board stated:

"It follows that 'positions' which are subject to the agreement are protected to the craft by the agreement and since 'work' is of the essence of a position such work which is the manifestation of the position and the identity of it is likewise protected to the craft."

We contend our claim is just and reasonable and request that it be sustained.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and are hereby made a part of the question in dispute.

CARRIER'S STATEMENT OF FACTS: Employes of a Bridge and Building Gang, consisting of a carpenter, masons, and mason helpers, removed eight pieces of 12" x 12" x 17' timber posts together with braces and wedges which had been used temporarily to support bridge °96.55 while same was undergoing repairs.

POSITION OF CARRIER: The work performed by the B&B Gang was the removal of eight (8) pieces of 12" x 12" x 17' timber posts which had rested on a concrete wall and supported the end floor beams of bridge °96.55. These posts had been wedged up against the steel work and were tied together by means of planks of 3" x 10" x 16' dimensions. To remove these supports, it was only necessary to loosen the wedges, remove the bracing, and lower the standing timber to the ground. If it is determined that this work required the use of carpenters, which is contrary to the Carrier's position, surely the one carpenter, who was regularly assigned to the gang, was sufficient. There was no fitting, framing, or any other type of carpenter work involved. Block and tackle were secured to the steel frames and posts were lowered to the ground. The work performed was that which is normally performed by a B&B gang, the complement of which included a carpenter to take care of such incidental carpenter work as arises. Carrier is of the opinion that there is no merit to this claim and requests denial of same.

Carrier records do not reveal any carpenter helpers on furlough because of force reduction during this period.

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 question presented here is similar in nature to the one which we decided in Award 5946.

In the instant case it became necessary to remove some temporary wooden supports from the Carrier's highway bridge. The super structure supports had been erected by the Carpenter's Gang No. 1, but the removal was assigned to a mason gang. The removal work was performed by the mason gang, of which one member was a carpenter.

The Carrier maintains that the mason gang was assigned to go out to the bridge to perform any faulty masonry of the bridge supports and that removing the temporary structural supports was merely incidental to their regular duties. However, the record fails to disclose if any such repairs were actually made.

Award No. 4800, in its Opinion by the Board, sets out in some detail the logic by which work accrues to certain types of positions when the specific duties of a titled position have not been enumerated.

It is our opinion that the work of dismantling the temporary supports was properly the work of a carpenter and carpenter helpers to the exclusion of the masons and mason helpers.

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 Carrier violated the Agreement.

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.