Award No. 6007
Docket No. MW-5882

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, 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 that:

(1) The Carrier violated the provisions of the effective Agreement when it assigned employes holding seniority in the track subdepartment to perform all the work in connection with the installation of crossing planks on Tracks seven (7) and eight (8), at the North end of Shop 18, Oneonta, New York, on October 7, 1948;

(2) The track forces assigned to perform the work outlined in Part (1) of this claim be paid as follows:

(a) The Track Foreman to be allowed the difference between what he was paid and what he should have been paid at the Carpenter Foreman's rate of pay;

(b) The Assistant Foreman to be allowed the difference between what he was paid and what he should have been paid at the Carpenter's rate of pay;

(c) The four Trackmen to be allowed the difference between what they were paid and what they should have been paid at the Carpenter's rate of pay;

(3) The senior Carpenter Foreman and five senior Carpenters working on the Susquehanna Division be allowed eight (8) hours pay at their respective straight time rate, because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On October 7, 1948, the Carrier assigned a Track Gang to renew a plank crossing on Tracks Nos. 7 and 8, at the North end of Shop 18, Oneonta, N. Y. The personnel of the Track Gang consisted of one Track Foreman, one Assistant Track Foreman and four Trackmen, who each performed eight hours service in the renewal of the plank crossing.

The planks used in the reconstruction of the crossing were sawed to a three inch thickness in the Carrier's shop. All other framing and fitting was performed at the location of the work by Track forces. The planks

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

OPINION OF BOARD: As indicated by the claim, it is the contention of the Employes that the Carrier violated the provisions of the effective agreement between the parties bearing dates of July 1, 1939, renewed November 15, 1943, amended September 1, 1949, and January 1, 1950, when it assigned employes holding seniority in the track sub-department to perform all work in connection with the installation of crossing planks on the tracks seven (7) and eight (8) at the north end of Shop 18, Oneonta, New York, on October 7, 1948. The claim was denied.

The Employes statement of facts and contentions may be summarized as follows: The planks used in the crossing were sawed to a three-inch thickness in the Carrier's carpenter shop. All other framing and fitting was performed at the location of the work by the track forces. The planks were placed over shims of approximately one inch thickness in order to equalize the top surface of the planks with the top surface of the adjacent rails. That no work of this character has ever been performed by track forces in the Oneonta yards, and bridge and building forces have customarily been assigned to perform such services, which includes the framing, drilling, and nailing of lumber of various dimensions.

In this connection the employes cite a list of crossings installed or renewed by bridge and building carpenters on the Susquehanna Division 1941; Cripple track, Binghamton, 1946; Mudyard Oneonta, 1948; Snake Track Oneonta, 1950; between Shop 18 and 19, Oneonta, 1950; Shop 10, Oneonta, 1950; and Cripple Track, Binghamton. Therefore, the Carrier must recognize that the work of installing or removing plank crossings is properly the work of carpenter classification and class.

The Empolyes cite and rely on Rule 1 (b) and 3 (c) of the effective agreement between the parties, as follows: "1 (b). An employe will hold and accumulate seniority in his own class and in all lower ranks of his class." "3 (c) Seniority rights of steel bridge men and equipment operators as such, shall extend over the entire system."

Under the above seniority rules, seniority of employes is restricted to their own class and sub-department, i. e., bridge and building employes are not of the same class and sub-department as section foremen, assistant section foremen and trackmen. In applying the above rules, the work such as was done here belongs to the bridge and building employes class, and not to the employes to which it was assigned. These rules appear in the July 1, 1939, agreement, and have been carried forward verbatim to the November 15, 1943, agreement, and remain the same when the agreement was again amended September 1, 1949, and January 1, 1950.

Rule 2 of the effective agreement reads as follows: "Rights of employes to positions shall be based on ability, merit, and seniority, ability and merit sufficient seniority shall prevail."

There being no question as to the ability and merit of the claimant carpenters and carpenters foremen, it must be recognized that their respective seniorities should prevail in the assignment of work of a carpentry nature.

Rule 18 of the effective agreement between the parties reads as follows: "Employes assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position their rate will not be changed." This rule is cited in behalf of the track forces who performed the work, to the effect that in so doing they would be entitled to the higher rate of pay.

The Carrier's contention may be stated as follows: On this property the trackmen, under the supervision of a section foreman, have been installing and renewing planks on crossings for a good many years whenever the necessity required it. It is the position of the Carrier that such work is incidental to normal track maintenance and has never, by rule or practice, been a part of the exclusive duties of employes of the bridge and building department. In support of this contention there appears in the record many sworn statements from B & B foremen and long term supervisors, as well as section foremen whose testimony is to the effect that the work of installing, maintaining, and repairing planks in public and private crossings is done by section gangs. Bridge and building foremen for a number of years testify that all plank crossings, both private and public, have been installed, repaired, and maintained by section forces. There is the testimony of a bridge and building mechanic, dating back 48 years, that during that time he had no knowledge of bridge and building carpenters installing highway crossing planks. The practice of section forces doing this kind of work on the Carrier's system has been in force for more than 40 years at least. This evidence stands undenied in the record.

The Scope Rule of the current agreement does not purport to describe the work encompassed within it. It sets forth that the rules contained therein shall govern the hours of service, working conditions, and rates of pay of all employes in any and all sub-departments of the Maintenance of Way and Structures Department represented by the Brotherhood of Maintenance of Way Employes, and makes certain exceptions.

Since the parties have not spelled out in their agreement the duties of bridge and building carpenters, we are justified in looking to practice over a long period of time as being of controlling effect in this controversy. See Awards 3727, 4922 and 4559.

We find the work here performed by the section forces of which complaint is made, to be work incident to and directly attached to duties of their position, and work of a type they have done for more than forty years. While it might be performed by bridge and building carpenters, it has not been exclusively given to them by their agreement. See Awards 5112 and 3003.

Where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself. See Award 5404, and awards cited therein on this principle. See also Awards 5564 and 2436.

In determining the rights of the parties it is our duty to interpret the applicable rules of the parties' agreement as they are written. It is not our privilege or right to add thereto. See Award 4435.

Therefore we have concluded, under all the facts and circumstances in this case, that there has been no violation of the agreement and the claim shall be denied.

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 did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 25th day of November, 1952.