

Award No. 6151
Docket No. MW-6163

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

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:

(1) That the Carrier violated the agreement when it required Section Laborers to perform Bridge and Building work and refused to compensate them at the Bridge and Building Helper's rate of pay;

(2) That Ed Viney, F. P. Brown, Travis Campbell, Fred Brown and Henry Frazier, be allowed the difference between what they received at the section laborer's rate of pay and what they should have received at the Bridge and Building Helper's rate of pay while performing work of the Bridge and Building Helper's class on May 14, 1951.

EMPLOYES' STATEMENT OF FACTS: On May 14, 1951, the track forces assigned to Section No. 280 were engaged in assisting a Bridge and Building crew to shift the deck of Bridge No. 604.9 and other work incident thereto.

Two of the section laborers were assigned as flagmen to protect trains during the period in which the bridge was unsafe for traffic. The remainder of the crew were used on the bridge proper to augment the Bridge and Building forces.

The work consisted of pulling the spikes on both main rails of the bridge, thereafter shifting the deck of the bridge to the desired position and to then re-spike the rails to the bridge ties.

The only purpose sought in removing the spikes which fastened the rails to the bridge ties was to facilitate the shifting of the bridge deck. The entire afternoon was consumed in the performance of the aforementioned work, beginning immediately upon the termination of the regular meal period at 1:00 P.M. and continued up to the regularly assigned quitting time at 5:00 P.M.

"Rule 37, Composite Service, does not apply here, even though B. & B. mechanics and their helpers were doing the work of cutting and fitting in place of flangeway blocks (presumably of wood), and the boring of lag screw holes in ties, together with the setting of lag screws, as required, with the slabs placed outside of rails at the time the concrete slabs were being placed on the highway crossing."

For reasons affirmatively shown in the foregoing claimants did not assist or help B&B men perform B&B work, and each group worked separately on an overall project in conjunction with one another and under the supervision of their own respective foremen. The claim of the employees that they worked on more than one class of work on any day is therefore not sustained by the facts and evidence and should be denied.

Without prejudice to Carrier's position that claimants did not work on more than one class of work on any day, the claim of the employees that they assisted B&B gang from 1:00 P.M. to 5:00 P.M. or four hours on the day involved is not supported by the evidence of record. When this claim was presented to Division Engineer, Mr. L. R. Deavers, and investigated by him, B&B Foreman Choate, who is not responsible for correctly keeping and reporting the time of section laborers, advised Mr. Deavers that three section men were used to pull spikes and drive them on main line rail from about 1:15 P.M. to 4:45 P.M., or approximately 3 hours 30 minutes each and F. P. Brown and Fred Viney were used as flagmen during that time. Section Foreman Kennedy's time and labor distribution records, who is responsible for correctly keeping and reporting the time of his men, reported and certified that the five claimants involved actually worked a total of sixteen (16) hours in the aggregate or an average of 3 hours 12 minutes each lining southbound main track at Bridge 604.9 on the date involved. The records of the Section Foreman being indisputable and irrefutable evidence of time actually worked by claimants in performing the service in question, it is therefore conclusively evident the character of work preponderating on the day involved was that of section laborer and not B&B Helper, and in any event this is also confirmed by information furnished by B&B Foreman who maintained no accurate or actual record of the time worked by section laborers and is not required to do so or responsible for doing so.

As the facts and evidence definitely and substantially show claimants were not used on two or more classes of work on May 14, 1951, and that the character of work preponderating on that day was not B&B Helper's work, as alleged but not affirmatively established by the claimants, the claim is without merit and should be denied.

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 the 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 employees or their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is in behalf of track forces who were engaged to pull and drive spikes on both main rails on a bridge. The purpose of the operation was the lining of the curve extending over the bridge. In order to accomplish this purpose it was necessary to shift the deck of the bridge and that made necessary the loosening of the rails. The deck was shifted by B. & B. forces working under their foreman and the rail spikes

were pulled and driven by the section gang under its foreman. It was not bridge maintenance work nor bridge repair work. It was track alignment work. The deck was shifted solely to permit such alignment.

Claimants assert that since the only purpose of pulling the spikes was to facilitate shifting the bridge deck, which was B. & B. work, the pulling of the spikes became B. & B. work. With equal logic it might be said that since the only purpose of shifting the deck was to line the track, which is the work of track forces, the entire operation was one belonging to the track forces.

On the property Carrier asserted without challenge that it was not unusual or infrequent occurrence for B. & B. and track forces to work at the same location under this and various other circumstances.

Claimants have not called our attention to anything in the Agreement from which we may determine that the work here involved was the exclusive prerogative of either track or B. & B. forces. Apparently track forces have frequently performed it in the past. We cannot say that Carrier violated the Agreement in again assigning it to them.

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 Employees involved in this dispute are respectively Carrier and Employees 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: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of March, 1953.