

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

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**PARTIES TO DISPUTE:**

**UNITED STEELWORKERS OF AMERICA, CIO**

**THE LAKE TERMINAL RAILROAD COMPANY**

**STATEMENT OF CLAIM:** These claims are for eight (8) hours pay for each claim, and are made on behalf of Maintenance-of-Way employees Joseph Keene, Joseph Darior, and A. Costro. They are made because of National Tube Co. employees doing work which comes within the scope of the Agreement between the Parties.

**EMPLOYEES' STATEMENT OF FACTS:** On November 8, 1952, at 5 P. M. National Tube Co. labor forces were engaged in digging a road crossing on the South Main of the Lake Terminal RR Co. Explanatory Note: The Lake Terminal Railroad Co. services the plant of the National Tube Co., a subsidiary of the United States Steel Corporation.

**POSITION OF EMPLOYEES:** The employees state that the Lake Terminal Company had no contractual right to allow industry employees to do this work. Because the Company admits the facts as stated above, there is no issue on them. However, while admitting the violation, the Company seeks to evade any penalty for the violation by asserting that the claimants were on duty and under pay at the time of the occurrence.

The Company, in taking this case to this Honorable Board, is seeking a reversal of Award made by the Second Division in favor of Car Department employees of the Lake Terminal Railroad Company. In this award, the Honorable Board of the Second Division said that because a violation had been proved, a penalty must be paid of one day's pay for each such violation under the Scope of the Agreement. The employees are very much concerned that the Company admits the violation, yet seeks to evade its responsibility. We ask this Honorable Board to note that if the Company had observed the Agreement in the spirit in which it was written, it would have prevented industry employees from doing work on its railroad property.

We ask this Honorable Board to rule that a violation of the Agreement was committed by the Company, and that under the Scope of the Agreement a penalty must be paid. For the Board to rule otherwise would leave the employees no protection whatsoever, and would allow the Company to violate the Agreement whenever it saw fit to do so.

The Company has been furnished with all the above data.

**CARRIER'S STATEMENT OF FACTS:** National Tube Division, United States Steel Corporation, built and for years maintained a roadway on Carrier's property running from the vicinity of the Carrier's roundhouse east to a point within the Industry's foundry area. This former roadway was reconstructed as a concrete road on the same location. In connection with this construction and approximately eight weeks before the instant claims arose, National Tube Division forces laid a temporary crossing over Carrier's tracks as a detour, the crossing consisting of slag spread between the rails with oil poured on as a binder. The temporary crossing was installed to enable the Industry

to have access to its own property. Upon completion of the concrete roadway, National Tube employes shoveled out the slag which formed the temporary crossing and loaded it in a truck. The Carrier received no advance notice of the Industry's intention to remove the crossing. At the time the work complained of was performed, the three claimants were on duty and under pay. Although the construction of the original roadway, the reconstruction of the concrete roadway, and the maintenance thereof have been performed by Industry employes, there have never been any claims asserted in behalf of Carrier's employes for such construction and maintenance work. The current Schedule Agreement between the parties contains no Scope Rule.

**POSITION OF CARRIER:** In the absence of a Scope Rule defining the work which the employes represented by this Organization are entitled to perform, such right to service must rest upon a recognized and established past practice. The construction, reconstruction and maintenance of the roadways described in Carrier's Statement of Facts by Industry forces over a long period of years and without any claim ever having been asserted in behalf of Carrier's employes, clearly establishes a practice contrary to the rights asserted in the instant claims. The laying of temporary crossing and the disputed removal thereof which gave rise to these claims was an incidental part of the reconstruction by the Industry of its roadway and as such must be recognized as work belonging to Industry forces rather than to claimants.

In the second place, we fail to see how the Carrier can be held responsible for a penalty claim for work performed without its prior knowledge or consent.

And finally, the three claimants here, since they were on duty and under pay at the time of the alleged violation, suffered no financial or other loss and accordingly cannot support their claims, even though it should be determined that the work complained of belonged to their craft.

It is hereby affirmed that all data submitted in support of the Carrier's position have been submitted in substance to the employes or their duly authorized representatives and made a part of the particular case in dispute.

**OPINION OF BOARD:** This Board has held that a claim or grievance must be supported by rules of the Agreement in effect. The Petitioner has cited no rules in support of its position, and we are unable to find any violation of the Agreement.

**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 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 17th day of February, 1955.