

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Hubert Wyckoff, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood, that:

- (1) The Carrier violated the Agreement when it assigned Track Department employes to the work of installing crossing planks at Canon City, Colorado, on April 20, 21, 22, 24, 27, 28, 29, 30, May 1, 4, 5, 12, 13, 15, 1953, for a total of 570½ hours;
- (2) B. & B. Foreman O. S. Dunbar, B. & B. Leadman R. J. Knoll, and Carpenters Ralph Zerfas, John J. Jauch, George Jauch, and Ernest Knox each be allowed pay at their respective straight-time rates for an equal proportionate share of the 570½ total man-hours consumed by Track forces in performing the work referred to in part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** A number of highway crossings at Canon City, Colorado, were scheduled for renewal and accordingly, sufficient planking and other necessary material was loaded at Pueblo, Colorado, by Bridge and Building forces for shipment to Canon City, Colorado.

In the meantime, the B. & B. forces learned that the crossing plank installation work was expected to be assigned to Track Department employes, whereupon they advised the Division Engineer and the B. & B. Supervisor that crossing plank installation work belonged to Bridge and Building Department employes. Consequently, the B. & B. gang was directed to perform the crossing plank installation work at Canon City.

However, after completing such work on two tracks at Ninth Street, the B. & B. gang was assigned to other duties and the work of installing crossing planks was thereafter assigned to Track Department forces at Canon City.

Framing, fitting, leveling, and drilling work was a necessary and integral part of the crossing plank installation work, with each plank solidly fastened to track ties by lag screws. Holes were drilled through each plank at points where lag screws were to be inserted and lag-screw heads countersunk into the plank by means of larger holes drilled to accommodate the lag-screw heads. It was also necessary to drill guide or "starter" holes in each tie at points where lag screws were inserted.

'Section forces may be used to replace crossing plank account of being worn out or where removed or track surfacing and on minor highway crossings that do not require the use of power drills or other tools commonly used by B&B forces.'

Please give this proposal your early consideration and advise if same is acceptable to you for the purpose of handling disputes of the nature we now have in progress.

Yours truly,

/s/ W. R. Ancell  
General Chairman"

Certainly it can be said with the utmost candor if there was any prohibition in the current Agreement against the use of track forces to install, remove, repair and/or replace crossing planks it would not be necessary for the Employees to propose such a rule as they did in their letter of December 31, 1953. Furthermore, if track forces—in the instant case—were required to perform work which they had not customarily performed, there is no question but what they would have claimed the Bridge and Building Carpenter rate. This they have never done.

Incidental to the installing, removing, repairing and replacing the crossing plank involved, the track forces performed any track maintenance work necessary such as changing rail, inserting ties, tamping ties, tightening rail joints, etc.

The Bridge and Building forces enumerated in claim lost no time. They worked and were compensated at their proper rates of pay on dates involved in claim.

As hereinbefore stated, it has been the practice on this property for over fifty years to require track forces, under the supervision of a section foreman, when necessary to install, remove, repair and/or replace crossing plank.

It is the Carrier's contention—as well as its position—that such work is not the exclusive work of Bridge and Building forces and asserts that since the various working agreements with the Maintenance of Way Organizations have never defined the work of Bridge and Building forces or track forces, the practice over a period of fifty years—without any effort on the part of the Employees to change the practice when new working agreements were negotiated—should be controlling. To support this statement the attention of your Honorable Board is invited to your Awards 3727, 4922 and 4559.

This claim to be allowed must be supported by rules of the current Maintenance of Way Agreement. That there is no rule to support the claim is evidenced by the fact the representative of the Employees in his letter of December 31, 1953 submitted to the Carrier a proposed rule to cover the work involved. This letter the Carrier asserts is ample evidence there was no violation of agreement rules in the instant case and—together with the long established practice, as well as the provisions of Award 6007 of your Honorable Board—warrants denial of the claim.

All data in support of the Carrier's position has been submitted to the Employees and made a part of the particular question in dispute. The right to answer any data not previously submitted to Carrier by the Employees is reserved by Carrier.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Track Department employees were used to install crossing planks and Bridge and Building employees claim the work was theirs.

The work consisted of framing, fitting, leveling and drilling. Holes were drilled through each plank at points where lag screws were to be inserted and lag screw heads were countersunk into the plank by means of larger holes drilled to accommodate the lag screw heads. It was also necessary to drill starter holes in each tie where lag screws were inserted. Planks had to be sawed to proper length and shims had to be fitted between the crossing plank and the track tie so as to bring the top of each plank level with the top of the rail. The tools used were braces, bits, saws, drills, tee wrenches, etc.

The Scope Rule does not describe the duties of particular positions; it simply lists general titles of positions such as "mechanics in the Bridge and Building Department" and "Track Laborers and all other classes of Maintenance of Way Laborers."

Although titles are an uncertain guide to what the actual duties of a position are, some types of work clearly fall under an occupational title according to ordinary, common understanding. See Award 4800 (Carpenters performing steel work) and Award 5484 (track laborers rebuilding telephone lines). In clear cases such as these past practice is immaterial.

We are unable to conclude that the work in dispute here is so clearly foreign to normal track maintenance as to preclude consideration of past practice. Tools used are not necessarily determinative. There is evidence that this work has occasionally been performed by Bridge and Building employees but the evidence establishes its greatly preponderant performance by Track Department employees over many years.

**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

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 8th day of July, 1955.