

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
BOSTON AND MAINE RAILROAD COMPANY**

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

- (1) The Carrier violated the effective Agreement on February 5, 1953, and on dates subsequent thereto, when they assigned a Bridge and Building Carpenter Crew to perform the usual and customary work of Bridge and Building Masons in constructing concrete foundations for tell-tale posts at Waltham, Massachusetts;
- (2) Bridge and Building Mason Foreman P. Colburn, Bridge and Building Masons T. McGilley, G. O'Donnell, F. Nardone, and Mason Helpers A. Voisvert and F. Lourette be allowed pay at their respective straight time rates of pay for an equal proportionate share of the total man-hours consumed by the Carpenter Crew in performing the work referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimants have established and held seniority in the Mason classes of the Bridge and Building Sub-department.

On January 30, 1953, the Bridge and Building Mason Gang in which the Claimants were regularly employed was abolished. The Claimants then exercised their seniority which necessitated their accepting service in the laborer's class.

On February 5, 1953, and on dates subsequent thereto, the usual and customary work of the mason classes in constructing concrete foundations for tell-tale posts at Waltham, Massachusetts, was assigned to and performed by a Bridge and Building Carpenter crew under the supervision of Bridge and Building Carpenter Foreman Mulhern.

Essentially, the work consisted of excavating to the desired depth and width; constructing concrete forms; mixing and pouring the liquid concrete aggregate; and other work incidental thereto.

Masons and Carpenters are separate and distinct classes of employees in the Bridge and Building Sub-department and are carried on separate seniority rosters. The Claimants were available and could have performed the instant work, had the Carrier been so inclined. The Agreement violation was protested and the instant claim was filed in behalf of the Claimants.

The Carrier does not intend to take away any work belonging to a specific craft or class; however, in the instant case, it should be permissive.

It is respectfully requested that this claim be denied in accordance with the foregoing.

All data and arguments herein contained have been presented to the Committee in conference and/or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim by furloughed Masons to the construction of concrete foundations for tell-tale posts assigned by the Carrier to Carpenters.

The work consisted of excavating to the desired depth, constructing concrete forms, mixing and pouring liquid concrete aggregate and work incidental thereto.

On the dates for which claim is made, Claimants were working 10 miles away in the Laborers' class, their former positions as Masons having been abolished. They were, therefore, available. The Carrier states that the disputed work on each tell-tale post consumed no longer than 30 minutes to perform with six men.

Carpenters and Masons are separate and distinct classes and appear on separate seniority rosters.

First. According to ordinary common understanding the work in dispute was Masons' work and not Carpenters' work (Awards 4800 and 5484).

The distinction between the two types of work involved here is clear and not of the twilight-zone nature involved in Awards 5914, 5249, 5120, 5043, 4846, 4779, 4585, 4512 and 3839.

Second. The Carrier contends that national transportation policy under the Transportation Act of 1940 requires it to operate in the most efficient and economical manner possible and that it would be uneconomical to require Carpenters to wait upon the availability of Masons to perform the "trivial" amount of work involved here.

It appears, however, that the Carrier had six trucks and chauffeurs available to transport men, materials and equipment to various work locations. With suitable planning and scheduling, which is entirely within the Carrier's control, it would not have been inevitable for Carpenters to wait upon the availability of Masons.

As for the "triviality" of the violation, it is our duty to construe the Agreement according to its terms and not according to our notions of gravity or triviality (Awards 1611 and 7022).

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 violated.

AWARD

Claim sustained.

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.