

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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 Agreement when it assigned Carpenters instead of Masons to protect newly-poured concrete from freezing during overtime hours from 12:00 midnight, November 6, 1953, to 4:00 P. M. November 7, 1953;

(2) Masons Paul Lockwood and Clinton Alger each be allowed eight (8) hours pay at time and one-half rate account of being improperly deprived of the right to perform the overtime service referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On Friday, November 6, 1953, Mason Force employees were engaged in pouring concrete in forms at the Carrier's new Sand House, Oneonta, New York, the point of work location herein involved located on the Susquehanna Division. Following the completion of the regular eight (8) hour assignment on November 6, 1953, in order to prevent this newly-poured concrete from freezing, Mason Leo Sawyer was instructed and assigned to keep fires burning outside of the forms where this concrete had previously been poured. Likewise, two salamanders were used on the inside of these forms for the same purpose. These salamanders burned oil and were required to be refilled at frequent intervals. Mason Leo Sawyer worked from 4:00 P. M., to 12:00 mid-night on November 6, 1953. At mid-night on November 6, 1953, Mason Sawyer was relieved by Carpenter Glenn Quick, who performed identically the same work as Mason Sawyer, and Carpenter Quick worked from 12:00 mid-night to 8:00 A. M., November 7, 1953, Carpenter Sheldon TerBush relieved Carpenter Quick in the performance of this work and completed the job at 4:00 P. M., upon that date.

Each of the afore-named employees received time and one half rates of pay for the service they performed upon the dates in question.

Claim for pay at the Mason's overtime rate was filed in behalf of Masons Paul Lockwood and Clinton Alger. The Carrier has declined the Claim.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

Due to a severe drop in temperature, portable heaters were installed to prevent the concrete from freezing. Three senior employes of the Bridge and Building gang were assigned to attend the fires and to protect other property from possible destruction by the fires.

POSITION OF CARRIER: Throughout the handling of this claim on the property the carrier has maintained that any class of employe could have been used to perform the duties that were required of these men; the only service was to see that the heaters had sufficient fuel to keep the fires going and to prevent a fire in any of the buildings in the event there should be one started by the heaters. A watchman or a laborer could have performed the work as no tools of any trade were used.

In selecting the employes to cover the duties, the foreman offered the work to the senior employes of Bridge and Building Gang No. 1.

The senior employe in the gang, Mason L. Sawyer, elected to work; the second oldest, a carpenter, did not wish to work; the third and fourth oldest employes, both carpenters, accepted the work. Each employe being allowed to select the shift he desired. Because of the continued cold weather Mason Sawyer also worked a second tour on November 7th.

The work of attending fires under such conditions has never been delegated to any one class of employes. In this particular Bridge and Building Gang No. 1 a lot of the work, to which none of the various trades could make any legitimate claim, is performed by various employes of the different classes. The carrier, likewise, is not prevented from assigning odd jobs to any class of employe.

It has not been established by the employes that the work in question belongs to any particular craft. Carrier respectfully requests that claim be denied.

The management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

OPINION OF BOARD: In its fourth submission in this Docket, Carrier asserts:

"There is no dispute between the Carrier and the employes concerning the fact that carpenters and masons are carried on separate rosters covering such classes, and that carpenters' work accrues to carpenters and masons' work accrues to masons. The dispute in this docket concerns only whether or not the work which is the subject of the claim was masons' work under the agreement involved."

The Carrier contends that the work of attending fires to keep the concrete from freezing was not masons' work; that it was not the work of any other particular craft or class.

Organization states that all work incident to the pouring and finishing the concrete was assigned to and performed by the three masons and three mason helpers; that the protection of this concrete from freezing during the setting process was work directly and inherently flowing to the Mason Class of employes.

Award 4077 is cited by Organization, wherein it was held:

"Whether certain types of work belong to Bridge and Building employes or some other craft, is dependent upon the purpose sought to be accomplished by it. If its purpose is to maintain a bridge by removing a hazard to its safe use, it is Bridge and Building work. If its purpose is to protect track and other facilities maintained by sec-

tion employes, the work would belong to them. Under the evidence produced in this record, we think the purpose of the work was the maintenance and safety of the bridges. This makes it Bridge and Building work."

Carrier points out that Bridge and Building Gang No. 1 was engaged in making a pour in elevation pit of the sand drying plant; that Gang No. 1 consists of masons, carpenters and painters; that the work of attending fires was not mason's work—any class of employe could have been used, as no tools of any trade were used. Carrier states its foreman offered this overtime work to the senior employes of Bridge and Building Gang No. 1 who wanted it.

While the Organization cites this portion of Award 2341,

"This work may be said to be incidental to their regular assignment in the sense that it would not be available to them except for the regular assignment,"

it is argued in Carrier's behalf that it is "difficult to understand how the Employes can sensibly argue that attending heating devices belongs exclusively to Masons as incidental to pouring concrete when Carpenters construct and remove the forms which are directly incidental to pouring concrete and a customary part of such work."

Admittedly the work of attending heaters requires no particular skill, and certainly none of the skills which identify a workman as a mason.

We must, therefore, conclude that the Organization has failed to prove that the work of servicing heaters, as here involved, belongs to Masons to the exclusion of all other classes or crafts. Admittedly it is not work assigned to Masons by specific reference in the Agreement.

A denial Award is indicated.

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

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1957.