

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(1) Carrier violated the Agreement when it assigned Track Department Employees instead of B&B Employees to perform dismantling work on loading ramp at Seymour, Indiana on June 29, 1954.

(2) B&B Mechanics Charles White and H. C. McCluskey each be allowed four (4) hours pay account of the violation referred to in Part one (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier maintained a loading ramp at Seymour, Indiana, which was located at the extreme west end of the Straight Rip Track. The platform and incline sections of this ramp were each 14 feet long and 12 feet wide. The under-structure was constructed of 12" x 12" timbers with 3" x 23" joists and 2" x 8" planking. The ramp was built entirely above the ground. This ramp was erected against the stub end of the Rip Track, which was not protected by a bumping device.

Early in June, 1954 trainmen allowed a car to overrun the end of the track which in turn displaced the loading ramp and caused it to obstruct an adjacent Company drive-way. Track forces cleared the drive-way by pushing the ramp back in place with lining bars. On June 26, 1954 the track supervisor addressed a letter to section foreman William P. Davis, instructing him to dismantle the ramp pending the time it could be rebuilt on some other track. On June 29, 1954 Section Foreman Davis and three trackmen consumed two hours each in dismantling the ramp and in piling the salvaged material nearby. The work assignment was protested by representatives of the employees and claim filed, contending that the work was properly assignable to Bridge and Building forces. The Carrier declined the claim and all subsequent appeals contending the work properly assigned to track forces.

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: At Seymour, Indiana, for a number of years, there had been an end ramp 12 x 28 feet in size at the end of Track T-14.

Secondly, in conferences on the property the organization argued that a section foreman and three trackmen had consumed some two hours in dismantling the ramp and piling up the salvage material. At the same time the Committee argued that the ramp had not been demolished but that it had only been moved out of position. The Committee argued that considerable dismantling had to be done and that such work properly fell to B&B forces. Again the Carrier asserts the palpable incongruity in the Committee's contention. This was a ramp of considerable size, bulk and weight. If, following the accident the ramp had remained essentially intact, as the Committee argues, then it logically follows that dismantling work of some considerable degree would have been required to disassemble it. Yet in the record introduced by the organization, it is asserted that no more than two hours were spent by the section foreman and the trackmen in dismantling the ramp and in piling up the salvage material. At best, by relation to the time consumed alone, the section men could have accomplished little more than simply picking up the pieces where they lay and carrying them to the spot designated to hold the salvage. In plain effect the only work done by the section men was to pick up the debris and carry it to the designated location nearby where it was stacked. The Carrier submits that had dismantling of any considerable degree been necessary, then such an operation performed by either section men or B&B forces would have required an amount of time far in excess of the two hours actually consumed.

Next, the Carrier directs this Division's attention to Paragraph (d) of Rule 1, the "Classification" rule, of the Maintenance of Way Agreement. Rule 1 (d) reads in full, as follows:

“(d) Roadway and Track Work.

Work required in the construction and maintenance of the roadway and track and (except where now reserved to employees covered by other agreements) in the loading, unloading and handling of all kinds of material will be performed by track forces.

NOTE: The following work will be considered a trackman's work; Relaying and repairing of crossing plank, except at crossings planked solid and requiring framing or fitting, temporary repairs to platforms, roofs, stockpens and other similar work required to be done at once to prevent damage to persons or property, painting of switch stands or other track appliances.”

The Carrier makes the positive assertion that the work performed by the section forces in connection with handling the debris constituting the remains of the end ramp at track T-14 fell within the category of “* * * work required * * * in the * * * handling of all kinds of material * * *.”

Under any circumstances it necessarily follows that paragraph (c) of Rule 1, the “Classification” rule of the Maintenance of Way Agreement, is wholly inapplicable to support the claim made here coming from the B&B forces. On the other hand it is apparent that the work performed by the section forces fell within a positive application of paragraph (d) of Rule 1, the “Classification” rule of that same agreement. Under such circumstances it can only be concluded that the work involved in this case was track work rather than B&B work.

In view of the above, the Carrier submits that the claim found here is not supportable in the rules. The Carrier respectfully requests this Division to not support the claim to be one without merit and to deny it.

OPINION OF BOARD: Carrier maintained a loading ramp, erected against the stub end of the Rip Track, which was not protected by a bumping device.

It is the claim of the Organization “that a car overran the end of the track which in turn displaced the loading ramp and caused it to obstruct

an adjacent Company drive-way. Track forces cleared the drive-way by pushing the ramp back in place with lining bars. Under orders, a Section Foreman and 3 trackmen consumed two hours each in dismantling the ramp and in piling the salvaged material nearby." Organization contends the work should have been performed by Bridge and Building forces.

It is Carrier's assertion that on four separate occasions "this ramp was struck by the cars being handled by the switch engine. On the last occasion it was demolished. The debris was disposed of by Section Forces."

It is the Organization's position that the "dismantling of this railroad structure is work covered by the aforementioned Section (c) (of Rule 1—Classification). This railroad structure was constructed and maintained by B&B forces and the dismantling work here involved was the initial step in the relocation and the reconstruction of this railroad structure at some other location."

Carrier, however, maintains that "the ramp was completely demolished." The record indicates that the car being handled by the switch engine struck the far end of the platform side of the ramp, propelling the section into the air. The platform and incline sections of the ramp were completely collapsed by reason of the accident. In a word, the ramp was completely demolished.

Carrier asserts that the work performed by section forces "in connection with handling the debris constituting the remains of the end ramp at track T-14 fell within the category of '* * * work required * * * in the * * * handling of all kinds of material * * *,' as outlined in Rule 1(d):

"(d) Roadway and Track Work.

"Work required in the construction and maintenance of the roadway and track and (except where now reserved to employees covered by other agreements) in the loading, unloading and handling of all kinds of material will be performed by track forces.

"NOTE: The following work will be considered a trackman's work: Relaying and repairing of crossing plank, except at crossings planked solid and requiring framing or fitting, temporary repairs to platforms, roofs, stockpens and other similar work required to be done at once to prevent damage to persons or property, painting of switch stands or other track appliances."

The "bump" which caused the dislocation or demolition of the ramp in question occurred early in June. The claim made by Organization is against Carrier's action on June 29, 1954, and is for 4 hours pay each for two B&B mechanics because of work performed that day by a section foreman and 3 trackmen who worked a total of 2 hours in "picking up the debris and piling it in a heap at a nearby point," as Carrier alleges, or in "dismantling a railroad structure," as Organization alleges.

The parties are not in agreement on any of the facts; their recital of the "facts" is at wide variance.

Organization claims that a "certain amount of dismantling work is always required in the maintenance of a railroad structure, such as dismantling certain portions thereof to permit replacement, remodeling or relocation. For example, flooring, siding, doors, windows, etc., which require replacement or which are to be remodeled must first be dismantled before any removal or remodeling work can be performed. The same holds true with respect to dismantling a railroad structure as the initial step in its relocation and reconstruction at some other location. Thus, dismantling work is so intimately related and incidental to maintenance work necessary in the relocation and reconstruction of a railroad structure that it becomes an inherent and inte-

gral part of such maintenance of railroad structures." Yet the record before us offers no evidence that the ramp here at issue was ever "reconstructed" at its original or new location. Carrier avers that "at the present time the debris still lies in a heap near the site of the old ramp. The debris has not as yet been salvaged, although the condition of the debris is such as to preclude this construction of a new ramp from the salvage."

On the basis of the record here made we must and do conclude that the Organization has failed to prove that the ramp in question was reconstructed at some other location; that the Organization has failed to prove this Carrier's action on June 29, 1954 was violative of the applicable Agreement. Awards 6879 (Coffey) and 6910 (Rader).

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 (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1957.