

Award No. 11141
Docket No. MW-10280

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement when it assigned the work of renewing and rebuilding roadway crossings north of Milepost 79 beginning on or about July 25, 1956 to Parson and Marksberry, Contractors.

(2) Extra Gang Foreman W. G. Phillips, and extra gang laborers C. H. Singleton, W. Allison, C. Trinkner, H. Trinkner, J. Norwood, J. Ashton, C. Gooch and R. Huley each be allowed pay at his respective straight time rate for an equal proportionate share of the total number of man hours consumed by the Contractor's forces in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The position of Extra Gang Foreman is encompassed within the Scope of the Agreement between the parties commonly referred to as the "Foremen's Agreement", whereas the position of Extra Gang Laborer is encompassed within the Scope of the Agreement between the parties commonly referred to as the "Laborer's Agreement."

Beginning on or about July 25, 1956, the work of paving the crossings north of Milepost 79 was assigned to and performed by a General Contractor whose employees hold no seniority rights under the provisions of this Agreement.

The work consisted of the removal of the old crossing, of then applying and spreading an asphalt mixture and the rolling thereof with a roller and other work incidental thereto.

CONCLUSION

Carrier has proven that:

(a) Claim is vague and indefinite and does not specify the amount which the Brotherhood here seeks to exact from the Carrier;

(b) The effective Maintenance of Way Agreements have not been violated as alleged. To the contrary, they have been complied with to the letter. The Carrier has not contracted away its right to assign the work.

(c) Paving streets, highway and road crossings is not work of the character usually, customarily or traditionally performed by maintenance of way employees. To the contrary. It is work of the character usually, customarily and traditionally contracted.

(d) Claims identical in principle have heretofore been denied by prior awards of the Board.

(e) Prosecution of the claim constitutes an effort by the Brotherhood to create work and establish new rules and conditions of employment for maintenance of way employees. But the Brotherhood conceded that point in making the proposal in its Section 6 notice of May 22, 1957.

Claim, being an absurdity and without any basis whatsoever and unsupported by the plain language of the Agreements in evidence, cannot be sustained by the Board. A denial award is clearly, therefore, in order.

All evidence here presented by Carrier is known to employees' representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to make reply thereto.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Maintenance of Way Employees and Cincinnati, New Orleans and Texas Pacific Railway Company.

On or about July 25, 1956 the Carrier contracted the work of paving the crossings north of Milepost 79 to a private contractor. The work consisted of the removal of the old crossing, of then applying and spreading on asphalt mixture and the rolling thereof with a roller.

Award 10715 is squarely in point and on the same property. The opinion expressed therein rules on the issues presented in this dispute. We must follow the doctrine of "Stare Decisis."

Although we might disagree with parts of the opinion in Award 10715, we are not prepared to declare the award to be palpably wrong. Therefore we find the Agreement was not violated.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1963.