

Award No. 11758
Docket No. MW-9712

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
(Eastern Lines)**

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

(1) The use of other than Steel Bridge Mechanics to perform the work of unloading and transporting steel bridge material; placing the keeper rings and shoes on the piers and abutments and the placing of the three (3) Steel I-Beam spans thereon in the construction of a bridge at Henrietta, Missouri, is a violation of the effective Agreement.

(2) Each of the following Steel Bridge Mechanics be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the other employees in performing the work referred to in Part (1) of this claim.

R. M. Drawbaugh	J. Butchel
C. C. Watkins	R. J. Burris
E. B. Powell	A. C. Sutton
L. L. Ballard	E. K. Erickson
M. H. Forrest	A. J. Bennett
R. J. Hoffman	D. L. Gunner

EMPLOYEES' STATEMENT OF FACTS: In 1955 the Carrier decided to widen Bridge No. 411.5 at Henrietta, Missouri, to accommodate a passing track extension at that location.

The work necessitated the construction of a lateral extension of the two abutments and the two piers of Bridge 411.5 and the erection of a steel bridge thereon.

On November 3 and 4, 1955 the work of unloading and transporting the steel bridge material to the bridge, the placing of the keeper rings and shoes

In conclusion the Carrier respectfully submits that the claim of the employees in the instant dispute should either be dismissed or denied in its entirety for the following reasons:

(1) The claim is entirely without support under the governing steel bridge gang agreement which neither by wording nor necessary implication sets aside this type of work as belonging to any particular classification of employees.

(2) The claimants do not have monopoly rights to the work in question.

(3) The handling complained of in this dispute is in accordance with a long established practice and/or custom which for more than thirty-five (35) years have not been abrogated or changed by agreement rules.

The Carrier is uninformed as to the arguments the Organization will advance in their ex parte submission, and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in replying to the Organization's ex parte submission or any subsequent oral arguments or briefs placed by the Organization in this dispute.

All that is contained herein is either known or available to the Employees or their representatives.

OPINION OF BOARD: Petitioner alleges that Carrier violated the Agreement when it used Division Bridge and Building Forces to unload and store at the site of work steel bridge material for subsequent use by a System Steel Bridge Gang. This work, Petitioner asserts, "is of the nature and character that has heretofore been usually and traditionally performed by the Carrier's Steel Bridge gangs." Carrier rebuts by averring that:

" . . . System Steel Bridge Gangs have been in existence on the property for more than thirty-five (35) years. During this period it has been a common practice to use Bridge and Building and section forces to unload and store steel bridge material in advance of the arrival of the Steel Bridge Gang. On occasion Store Department, Mechanical Department and/or Warehouse employees have been used to perform such work and in some instances the Steel Bridge force itself has been used."

Thus, on the property, issue was joined as to whether the work, by compulsion of the Agreement, was reserved to employees in "steel bridge gangs." This put Petitioner to its proof.

The Facts

In 1955, Carrier decided to widen Bridge No. 411.5 at Henrietta, Missouri, to accommodate a passing track extension at that location. The work necessitated the construction of a lateral extension of two abutments and two piers and the erection of a steel superstructure thereon, consisting of three 50 foot steel spans or I-Beams. Division Bridge and Building forces performed the work in connection with the extension of the concrete piers and abutments, completing such work on June 9, 1955.

The steel spans and necessary fittings for the superstructure were delivered to Carrier at Henrietta on October 27, 1955. At that time Claimants,

employed in Carrier's Steel Bridge Gang No. 2, were engaged in completing work on Carrier's Mississippi River Bridge at Fort Madison. This Gang arrived at Henrietta on November 10, 1955 and proceeded to erect the steel superstructure on Bridge 411.5.

The claimed violation of the contract involves only the work of unloading and placement of the steel spans and necessary fittings for the superstructure after they were received at Henrietta and before arrival of Steel Bridge Gang No. 2 at the site of Bridge 411.5. Instead of unloading the spans and fittings on the ground in the location where the cars on which they were delivered were spotted, the Bridge and Building Force loaded them on a push car which was moved to Bridge 411.5. There the same Force unloaded and stored the materials on the extension to the concrete piers and the two abutments in the approximate position where they would later be used by members of Steel Bridge Gang No. 2. Carrier states that this was done "to avoid a second handling by steel bridge gang employees." It was the moving of the materials to the site of Bridge 411.5 that Petitioner claims to be a violation. In the record Petitioner indicates there would have been no violation had the material been unloaded and stored in the vicinity of the spotted cars in which delivered, with subsequent transportation to the job site by the Steel Bridge Gang.

Pertinent Provision of the Agreement

The pertinent provision of the Agreement reads:

"ARTICLE I

Scope

This Agreement governs the hours of service, wages and working conditions as herein specified for employees in company steel bridge gangs except foremen and assistant foremen who as such are not covered by these rules."

The Issue

The issue is whether under the Scope provision of the Agreement, *supra*, Carrier's "steel bridge gangs" had the "exclusive" right to the work involved in transporting the material for the superstructure from the vicinity of the cars on which it was delivered to Henrietta to Bridge 411.5.

Interpretation and Application of the Scope Rule

The Scope Rule does not define the work which it encompasses. Such being the case, the weight of authority, founded in prior Opinions of this Board, is that for Petitioner to prevail, it must prove by a preponderance of the evidence, in the record, that historically, traditionally and customarily the work involved has been performed on the Carrier's system, exclusively, by "steel bridge gangs." With this test as our premise, we weigh the evidence in the record.

The Evidence in the Record

Petitioner states "The work . . . is work of the nature and character that has heretofore been usually and traditionally performed by the Carrier's steel bridge gangs . . ." Carrier timely denied that statement. Petitioner, therefore, has the burden of proof.

To prove its statement Petitioner has adduced, in the record, the following:

1. An excerpt from a letter dated March 4, 1956 from an unnamed or otherwise identified Claimant Steel Bridge Mechanic that reads:

“The work the B&B division force did was our work. Their work of the past is carpenter work on bridges and buildings.

I have been with the company for the past 18 years and to my knowledge this is the first steel bridge work the B&B force has performed.”

2. A letter dated October 29, 1956, addressed to the General Chairman, impliedly signed by the Claimant Steel Bridge Mechanics, which reads:

“To the best of our knowledge the B&B employes have never unloaded and set the steel on the Engineer’s points.”

There is no evidence in the record that the signers of the letters, set forth in paragraphs 1 and 2, above, were qualified to testify to system-wide past practice of the Carrier. We can attach no probative value to this evidence; especially, since the Petitioner, which represents all of the employes of the Carrier in “steel bridge gangs,” system-wide, and, therefore, was in a much better position to testify to system-wide practices than individual employes has by the following statement disavowed knowledge of Carrier’s system-wide practice:

“. . . If any work of this nature has been heretofore performed by other than steel bridgemen, we certainly have no knowledge of such practice. Considering the magnitude of this Carrier’s operations, one can readily understand why the organization could not possibly police this company’s entire property.”

We find that Petitioner has not satisfied its burden to prove a system-wide practice, by Carrier, which is indispensable to proving the Claim. We will deny the Claim.

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 1st day of October 1963.