

Award No. 11922

Docket No. MW-11267

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, in lieu of recalling furloughed Bridge and Building employees Jim Hix, Tole Roberts and C. A. Dunlap to service on B&B Gang No. 2 to assist in the installation of a metal pipe culvert at Mile Post 15, Pole 7, St. Louis Line, on May 13 and 14, 1958, it assigned or permitted Track Maintenance Gang No. 1 to assist in that work.

(2) Furloughed Bridge and Building employees Jim Hix, Tole Roberts and C. A. Dunlap each be allowed sixteen hours' pay at the B&B Helper's rate of pay because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On May 13 and 14, 1958 the Carrier assigned or otherwise permitted Track Maintenance Gang No. 1, consisting of a Foreman and five men, to assist Bridge and Building Gang No. 2 in the installation of a metal pipe culvert at Mile Post 15, Pole 7, on the Carrier's St. Louis Line.

The work consisted of transporting the metal pipe from Lackland to the work location, the placing of the pipe and the backfilling thereof.

The Claimant Bridge and Building employees, who were in furloughed status, were available, ready and willing to assist in the performance of the subject Bridge and Building work, but were not called or notified to do so.

The Agreement violation was protested and the instant claim filed in behalf of the claimants.

The claim was declined as well as all subsequent appeals.

(c-1) Mechanics, first-class: Mechanics who are capable of laying out work and working from plans, skilled in the erection of new structures, as well as altering and maintaining existing structures and performing all other bridge and building work in a workmanlike manner coming under the scope of this department, shall be considered composite mechanics as their work comprises all classes of mechanical work.

(c-2) Mechanics, second class: Mechanics capable of doing all rough carpenter, bridge and repair work.

(d) Bridge & Building Helpers: Employees assigned to perform work generally recognized as helper's work and assisting mechanics in the performance of their work."

The work of transporting the pipe and back filling the section maintenance gang performed on request of the B&B foreman (who incidentally claimed no violation of the Maintenance of Way Agreement, and saw none) is not construction, repair nor maintenance as contemplated by the above rule, nor it is skilled or rough carpenter, bridge, construction or repair work.

Rule 1, Group 1(f), permits laborers to perform excavating or back filling and pick and shovel work. Therefore, how can it be said that such work is that of B&B mechanics or helpers as claimed here when section laborers under the same agreement with the organization involved here performed the simple task of transporting pipe and doing back filling at request of the B&B Foreman whose gang needed assistance.

Hauling material is not a monopoly of any craft and back filling is unskilled laborers' work, under the agreement. Neither is contained in the Scope Rule nor in Group 1 (a), (b), (c-1), (c-2), nor (d).

On the basis of the facts and evidence in this case, the claim has no merit and should be declined.

It is hereby affirmed that all of the foregoing is, in substance, known to the organization's representatives.

OPINION OF BOARD: The facts in the instant case are not in dispute. On May 13 and 14, 1958, B&B Department Gang No. 2 was assigned by the Carrier to install a metal pipe culvert near Lackland, Missouri. In the performance of this work the B&B Gang was assisted by members of Track Department Gang No. 1 in transporting the pipe from Lackland to the point of installation, installing the pipe, and the backfilling necessary to complete the project. This use of Track Department employees was protested on the basis that furloughed B&B employees should have been recalled to service to do this work.

Petitioner contends that employees in the B&B seniority classifications have the contractual right to perform all service directly or indirectly related to the construction of structures of whatever character within the territorial limits of their seniority district; that the use of any employees outside the B&B seniority classification is a violation of the Agreement; the Organization claims that the Claimants (employees of the B&B seniority classifications

which include B&B laborers), are entitled to be paid for the number of hours consumed by Track Department seniority employees while assisting the B&B Gang in moving the pipe, installing it, and in the backfilling work performed.

Carrier takes the position that the Petitioner has the burden of proof to point to some contractual provision granting the work to the Petitioner. The work of transporting the pipe and backfilling the section maintenance gang performed is not construction, repair or maintenance as contemplated by the rule and it is not skilled or rough carpenter, bridge, construction or repair work. Hauling material is not a monopoly of any craft and backfilling is unskilled laborers' work under the Agreement. It is further argued by the Carrier that the Scope Rule does not grant this laborers' work to any specific craft and further that section gangs have the precise function of doing laborers' work. There is also the additional fact that whatever skilled work was involved in the instant project was in fact performed by B&B forces.

There is no showing in either the contract between the parties or their past practice under the Agreement that any particular craft has the sole right to move equipment to a work project or backfilling. It would appear that this work was in fact non-skilled labor and the record is devoid of proof that the work in question has been traditionally or historically performed by the Petitioner.

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1963.