Award No. 12671
Docket No. MW-12178

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement between the Nashville, Chattanooga & St. Louis Railway and its Maintenance of Way employes represented by the Brotherhood of Maintenance of Way Employes when, during the period from December 19, 1958 through February 10, 1959, it assigned individuals holding no seniority rights thereunder to repair Bridge No. 2.1 located on the Lebanon Branch Spur within the Chattanooga Division of the N. C. & St. L. District.

(2) Each of the following named B&B employes be allowed pay at his respective straight time rate for the number of hours opposite his name, account of the violation referred to in Part (1) of this claim.

W. A. Crisp, Foremen	—172 hours	W. L. Earls, Helper	—169 hours
C. C. Golden, Carpenter	—172 hours	T. K. Darnell, Helper	— 77 hours
H. M. Counts, Carpenter	—172 hours	T. K. Darnell, Laborer	— 95 hours
J. F. Finney, Helper	— 92 hours	Andrew Long, Laborer	— 77 hours
J. F. Finney, Carpenter	— 80 hours	R. C. Marty, Laborer	— 77 hours

EMPLOYES' STATEMENT OF FACTS: Although the former Nashville, Chattanooga & St. Louis Railway has merged with the Louisville and Nashville Railroad, separate agreements continue to control on the territories formerly comprising the two systems. The former Nashville, Chattanooga & St. Louis Railway is now referred to as the N. C. & St. L. District.

The Chattanooga Division of the N. C. & St. L. District, extends from Chattanooga, Tennessee to and including the Signal Bridge located near Fourth Avenue South at Nashville, Tennessee.

Up until 1935, the Lebanon Branch of the Chattanooga Division extended from Nashville to Lebanon, Tennessee. In 1935, the former Nashville, Chattanooga St. Louis Railway was granted authority to and did abandon all of the Lebanon Branch trackage, except approximately 13000 feet, extending southbound from a switch located near Fourth Avenue South at Nashville, across Bridge 2.1 to serve a number of industrial concerns.

"This Board views the second claim as an effort on the part of the Organization to penalize the Carrier for a breach of the Agreement, i.e., to levy a fine on the Carrier. There is nothing in the Railway Labor Act to give this Board any such authority. Nor is there any provision in the Agreement calling for any fines or penalties in case of violations. . . ."

It is, therefore, the position of carrier that in view of the circumstances involved, there is no basis for the claim and same should be denied.

OPINION OF BOARD: The essential facts in this dispute are not in issue. The historical relationship between the former Nashville, Chattanooga and St. Louis Railway and the Louisville and Nashville Railroad Company since 1935, is fully set forth in the submissions by the parties in this case. Therefore, we shall limit our discussion to those particular facts of the various transitional stages culminating in the merger of the two carriers on August 30, 1957, that are directly related to merits of the instant claim.

This claim is based on the alleged violation of the former Agreement between the Nashville, Chattanooga and St. Louis Railway and the Petitioner which was in effect at the time of the dispute, but which has been superseded by a single Agreement since May 1, 1960, covering the Maintenance of Way employes of both carriers. Between December 19, 1958 and continuing through February 10, 1959, the surviving Carrier subsequent to merger (Louisville and Nashville Railroad Company), assigned to and had performed by B&B Department employes of its Nashville Terminal, certain repairs to Bridge No. 2.1, which had been previously maintained by B&B employes of the former Nashville, Chattanooga and St. Louis Railway, now designated the Chattanooga Division by the Carrier.

Separate seniority districts were maintained for B&B Department employes under the existing Agreements with the former separate carriers after the merger and at the time of the dispute. The basic contention of the Petitioner is that under the controlling Agreement covering the B&B employes of the former Carrier, they had the exclusive right to perform all such work in their respective seniority district including the work performed on the bridge designated No. 2.1. The Petitioner asserts that the Carrier violated various provisions of the effective Agreement, particularly Rules 1 and 4 thereof, when it assigned Nashville Terminal B&B employes from a different seniority district to perform the work in question.

The Carrier primarily relies upon an Agreement between the two former carriers dated December 28, 1940, whereby they agreed to the establishment of certain Maintenance Territories to be assigned to employes of the respective carriers. The Petitioner was not a party to said Agreement. The Carrier asserts that this Agreement, in part, transferred B&B work on Bridge 2.1 from the seniority district of the Claimants to another district, even though there was no concurrence in such action by the Petitioner. The Carrier also notes that no complaint or claim had been filed in connection with the changes made in the Nashville Terminal's Maintenance limits in almost nineteen years in further support of its position.

The Organization submitted probative evidence establishing the fact that on all previous occasions since the Agreement of 1940, necessary repair and maintenance work on Bridge No. 2.1 had been performed by B&B employes from the seniority district of the Claimants herein and the Carrier's own evidence substantiated this contention. Therefore, we find the claim to be timely filed.

It is well established that work of a class covered by an Agreement belongs to those for whose benefit the contract was made. A transfer of such work to others covered in another seniority district under a different Agreement, whether through error or otherwise, is violative of the controlling Agreement. (Awards 5172, 4490, 3955, 2706 and others). In this case, the Carrier made no effort to modify the terms of the Agreement with the Petitioner until after the claim had been filed and admitted in its own submission, that in the past, ". . . through error the B&B work has been performed by Chattanooga Division employes." Therefore, the Carrier violated the Agreement when it used its Nashville Terminal B&B Department employes to perform the work on Bridge No. 2.1.

The Petitioner's claim (Part 2) prays for an award of money to be paid to each of the particular named B&B employes at his respective straight time rate for the computed time they allegedly would have worked if they had been assigned to perform the number of hours actually worked by the Nashville Terminal B&B employes. The Petitioner primarily relies on numerous awards which have held, under various factual situations, that the full employment of Claimants is not necessarily a valid defense against such monetary claims. Particular emphasis is placed upon two recent awards of this Board by the Petitioner. (Awards 11937 and 11938).

The Carrier contends that the Agreement contains no provisions for so-called punitive damages for contractual violations such as we have found in this case. It argues that the Claimants have not been damaged monetarily and are, at most, entitled to nominal damages. In support of its position, the Carrier cites a number of previous awards and federal court decisions.

After careful review of the entire record in this case, we find that the extent of the monetary damages suffered by the Claimants is a matter of proof. The Petitioner has submitted specific hourly claims on behalf of each individual Claimant, based upon the number of actual hours spent on the disputed work assignment by others, which can be readily translated into specific monetary claims. The Carrier has offered no evidence that the Claimants could not have performed the work by working overtime or that the work could not have been delayed and later performed during regularly scheduled hours of work.

The violation of the Scope Rule of the contract has been established by the Petitioner and a prima facie case of damages as claimed presented to the Board. The Carrier has failed to sustain its burden by offering any factual evidence negating the damages claimed and supporting its bare assertion that the Petitioner seeks only punitive damages for the contractual violations. (Awards 11937 and 11938).

The Carrier here has erroneously described the monetary claim as a prayer for punitive damages which implies that the Organization seeks the assessment of a penalty over and above the damages suffered by the Claimants. We find that the damages sought by the Petitioner are limited to compensatory damages directly arising out of the Carrier's violation of the Agreement, which would compensate the Claimants by making them whole for work they otherwise would have performed and wages they would have earned. (Awards 11937, 11938 and 11701).

We will sustain 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June, 1964.