

Award No. 12728
Docket No. MW-11452

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, during the week of April 7, 1958, it required Track Department forces from Section 26 to construct motor car take-off platforms at or near Mile Posts 222-08, 223-29 and 224-10, and failed and refused to compensate them therefor at applicable B&B rates of pay.

(2) Track Foreman Jasper Maple now be allowed the difference between what he should have been paid at B&B foreman's rate and what he was paid at Track Foreman's rate for the twenty-seven (27) hours he expended in supervising and directing the performance of the B&B work referred to in Part (1) of this claim.

(3) Trackmen James Huffer, Darrell Ricks and Samuel Seabolt each be allowed the difference between what each should have been paid at the carpenter's rate of pay and what each was paid at the trackman's rate of pay for the twenty-seven (27) hours each expended in performing the B&B work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: In compliance with instructions received, the section crew assigned to Section 26 transported wooden platform material from Mile Post 223-03 to Mile Posts 222-08, 223-29, and 224-10, and then constructed one motor car take-off platform at each of the last three mentioned locations, using the wooden platform material they had previously brought to such locations. The work entailed fitting the timber material, beveling each end thereof and securely nailing it to the cross ties within the track area and to stringers outside of the track area. Twenty-seven (27) hours were consumed by each claimant in the performance of the work just described.

Since the claimants were not compensated for that work at applicable B&B rates of pay, the instant claim was timely and properly presented. The claim was declined and appeals were then timely and properly made to each appeal officer, up to and including the highest officer designated to handle such appeals. All appeals were declined.

The Carrier has shown that the time alleged to have been consumed on the work is incorrect, both as to total time on the project and that of the individual workmen thereon, also that a part of the work claimed was performed on April 4, 1958, and not during the week of April 7, 1958, and that although the representative of the Employees was so advised by the Carrier, the Employees did not amend the claim and have presented to the Board facts which they know to be erroneous.

More important, the Carrier has shown that the work performed was work on tracks, roadways, and other work incidental thereto, and historically considered as work coming under Rule 52(c). As such, it was properly performable by track forces at their established rates of pay. The employees actually performing the work so understood the rules, as is evidenced by Carrier's Exhibits B-1, B-2, B-3, C and D. History and practice of many years' standing confirm that application of the rules.

The claim is wholly without merit and must be dismissed or denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In accordance with the findings and conclusions of the Board in Award No. 12726, this claim will also be denied.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1964.