Award No. 12730
Docket No. MW-11593

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 No. 27 to construct a motor car take-off platform at or near Mile Post 227-09 and failed and refused to compensate them therefor at applicable B&B rates of pay.

(2) Track Foreman Joseph Brown now be allowed the difference between what he should have been paid at the B&B foreman's rate and what he was paid at the Track Foreman's rate for the seven and one-half (7½) hours he consumed in directing and supervising the performance of the B&B work referred to in Part (1) of this claim.

(3) Trackmen Clarence Phillips, Ray Alter and Albert Jaggers each be allowed the difference between what each should have been paid at the carpenter's rate fo pay and what each was paid at the Trackman's rate of pay for the seven and one-half (7½) hours which each consumed in performing the B&B work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: In compliance with instructions received from the Carrier's officers, Track Department forces assigned to Section No. 27 transported wooden platform material from Mile Post 233-03, where same had previously been unloaded from gondola car NKP71716, to Mile Post 227-09, at which point this track crew then constructed a wooden motor car take-off platform. 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 thereafter properly and timely made to each appeal officer up to and including the highest officer of the Carrier designated to handle such appeals. All appeals were declined.

The Agreement in effect between the two parties to this dispute dated February 1, 1951, together with supplements, amendments, and interpretations thereto, is by reference made a part of this Statement of Facts.

As a matter of fact, if what the Vice-Chairman termed "default" (failure to handle within the time limits provided in Article V of the August 21, 1954 Agreement) decided the disposition of all future claims on the railroad, then the progression of the instant claim would be barred by the Employes having "defaulted" on many other similar claims. The following are just a few of such claims, the data on which is involved in other cases now before your Board:

Willoughby — June 25, 1957.
MP 119-20 and 119-40 — August 19-20, 1957.
Oakland — August 16-17, September 12, 1957.
Hillisburg — April 7, 1958.

But neither party can change the terms of Article V of the August 21, 1954 Agreement by asserting that the failure of either party to observe the time limits in one or more cases constitutes a "default" in other cases or that such failure constitutes a precedent or waiver on the part of Carrier under Section 1 (a) but does not do so on the part of the Employes under Section 1 (b) of that agreement. A simple reading of Article V will show that such thinking is inconsistent therewith.

The Carrier has shown that the work performed by the claimants was work on tracks and roadways and other work incidental thereto as contemplated by Rule 52 (c) of the current agreement. Such work has been historically assigned to track forces. The employes actually performing the work so reported their time and so understood the matter (See Carrier's Exhibits B, C, and D). The *record thus established by the employes themselves, combined with many years* of consistent practice, constitutes the best proof possible that the claimants were fully and properly compensated for the work performed.

The claim is entirely without merit and must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In accordance with the findings and conclusions of the Board in Award No. 12726, this claim also will 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 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 July 1964.