

Award No. 12733
Docket No. MW-11467

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 it assigned track forces (Sections 17 and 18) instead of B&B forces to dismantle an old and construct a new wood-bituminous highway crossing at Mile Post 162-33-34 at First and High Streets in Albany, Indiana.

(2) The Carrier further violated the Agreement when it failed and refused to compensate the track crews from Sections Nos. 17 and 18 at applicable B&B rates of pay for the performance of the work referred to in Part (1) of this claim.

(3) Track Foreman Hansel Beal (Section No. 18) and Track Foreman Raymond Ruble (Section No. 17) each be allowed the difference between what they should have been paid at B&B foreman's rate and what they were paid at track foreman's rate for five and one-half hours consumed in supervising and directing the performance of the B&B work referred to in Part (1) of this claim.

(4) Trackman Charles Youngblood, Charles Jellison, George Stephens (all from Section No. 18), Jack Stephens, Russell Harness and Riley Reff (from Section No. 17) each be allowed the difference between what they should have been paid at carpenter's rate and what they were paid at trackman's rate for five and one-half hours which each consumed in performing the B&B work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: There is no real or substantial disagreement on the facts involved in this case, as evidenced by the facts as related respectively by Vice-Chairman Durr in his letter of claim presentation and by Chief Engineer Whitmore in his letter of claim disallowance, their respective versions reading:

- (c) that Rule 51 (*Composite Service*) does apply to the work in question;
- (d) that Rule 52 is a penalty rule, and if applied then Rule 51 has no application;
- (e) that Rule 52 is a penalty rule per se and that Rule 51 also applies to the same work;
- (f) that a bituminous highway crossing is a wooden platform, a wooden vehicular or vehicle crossing;
- (g) that a bituminous highway crossing is not a bituminous highway crossing because it is composed mostly of stone and requires barriers of wood or other material; and
- (h) that the application of the rules in similar situations depends entirely on how inconsistent the Employees choose to be in a particular case.

The Carrier, of course, does not challenge the right of the Employees to police the agreement and bring any case to this Board for adjudication, but it does feel that in this series of cases, of which the instant claim is but one, the Employees seek to obtain separate decisions from your Board that may be inconsistent among themselves. It is apparent that the Employees are reluctant to meet the principal issues head-on and by using shotgun tactics are hoping that your Board will attach some weight to one or more of their alternate theories which they may then use to their advantage.

As to the merits of this particular claim, the Carrier has shown that the portion of the work made the subject of this claim was work on a "bituminous highway crossing and other work incidental thereto" as contemplated by Rule 52(c) and the claim is without basis and must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties, the facts, the issue and the Agreement in effect in this docket are substantially the same as those upon which the Board rendered Award No. 12731.

That Award, therefore, applies and is controlling here. The claim, accordingly, 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 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.