

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 Department employes from Sections 17 and 18 instead of B&B employes 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) Carpenters Noel Gulley and W. H. Reecer and Carpenter Helpers Elmer Miteff and John Cable each be allowed pay at his respective straight time rate for an equal proportionate share of the 44 total man hours consumed by track forces in performing the 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:

"The claimants are assigned, employed and hold seniority as foreman and trackmen respectively on the Middle District of the Lake Erie and Western Division of the carrier.

On July 24, 1958 the claimants were required to dismantle the wood and bituminous material in this vehicle crossing at First and High Streets in Albany, Indiana, Mile Post 162-33-34, salvaging parts of same for reuse taking up same that was on top of regular track ties, utilizing two and one half hours to do so.

On July 25, 1958 the claimants reused part of the wood and bituminous material to construct a vehicle crossing at this location using approximately 500 feet of 4x8 wood stock formerly in crossing, approximately 160 feet of new 4x8 stock, 192 feet of 1 inch by 2 inch shim stock to shim the 344 feet of 4x8 stock that was adjacent to the

Rule 51—Composite Service, provides that when an employee temporarily performs higher rated work and the work is not subject to bulletining and assignment, the employee performing the work will receive the benefit of the higher rate. The rule also provides that in the event a regularly assigned employee performs lower rated work in the same circumstances, his rate will not be reduced.

Rule 52—Classification of Work, provides a guide as to the work to be considered as either Bridge and Building work or Track Department work so that Rule 51—Composite Service, can be constantly applied. Other rules, such as seniority, bulletining, assignment and displacement, already take care of vacancies or new positions.

Rule 54—Work not Performed, recognizes that while there are compensatory rules in the agreement for all work performed, there are also certain compensatory rules covering work not performed. The rule is intended to protect the Carrier from paying for the same work twice to employees coming under the same agreement—once to the employee or employees performing the work which the Carrier has already paid, and again to employee or employees not performing the same work.

The Carrier has shown that the portion of the work of renewing the bituminous highway crossing made the subject of this claim was merely "other work incidental thereto" which is assignable to track forces under Rule 52 (c).

It has also shown that if the work were held to be classified as B&B work and that track forces should be compensated for the work performed at B&B rates under the provisions of Rule 51, as alleged by the Employees in the companion claim, then such compensation would be full compensation for the work performed.

It has further shown that in that eventuality any claim for compensation for B&B employees for work not performed is specifically barred by the provisions of Rule 54.

The claim is without merit 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.