

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: The Carrier violated the effective Agreement when it assigned Track Foreman Paul Titsworth, Assistant Track Foreman Tony Fenoglio and Trackmen Richard Craig, Charles Gaines, Harold Sturgeon and Roy Brown to construct a vehicular crossing in its Madison, Illinois yards on April 30, 1958, and failed and refused to compensate these employees at the applicable B&B rates of pay for such service.

(2) Track Foreman Paul Titsworth and Assistant Track Foreman Richard Craig be allowed the difference between what they were paid at the Track Foreman's and Assistant Track Foreman's rate and what they should have been paid at the Carpenter Foreman's and Assistant Carpenter Foreman's rate, respectively, for their services as referred to in Part (1) of this claim.

(3) Each of the Trackmen referred to in Part (1) of this claim be allowed the difference between what he was paid at the Trackman's rate and what he should have been paid at the Carpenter's rate for his service as referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On April 30, 1958 the claimant Track Department employees were assigned to and did construct a vehicular crossing in the Carrier's Madison, Illinois yards to accommodate motor vehicles entering and leaving the yard.

The work consisted of transporting second-hand switch ties from the point of storage to the work site, the installation thereof on each side of each rail and filling the void with cinders. The necessary carpenter tools used by the claimant employees to perform the required cutting and fitting in the installation of the second-hand ties were borrowed from Foreman M. E. Blue's Bridge and Building gang. Thirty-five man-hours were consumed by the claimants in the performance of the aforementioned work, for which they were allowed compensation at the Track Foreman's, Assistant Track Foreman's and Trackman's rate, respectively.

The Agreement violation was protested and the instant claim filed in behalf of the claimants. The claim was declined, as well as all subsequent appeals.

any platform was constructed. According to Foreman Titsworth, at least five hours of any time on the work in question was spent in leveling track. Of the remainder of the 35 hours, it is apparent that considerable time was spent in gathering up the secondhand switch ties and transporting them to the site. The dispute as to the number of hours expended could not be resolved on the property, and in making claim to this Board, the Employees have intentionally left their claim indefinite, since nowhere in any record is there a definite division of time, as alleged by the Employees.

Contrary to the contention of the Employees, boring holes, putting in lag screws, and adzing switch ties is work that is customarily done by trackmen. To facilitate the work and avoid manual labor an air drill was borrowed from the Mechanical Department, but air drills for boring ties are a common tool in the Track Department and lag screws are a stock item in the Track Department.

The work performed by claimants on April 30, 1958, was a part of the installation of a private roadway or crossing constructed of bituminous material and other materials incidental thereto, and for which service they were properly compensated at their own rate. No "vehicle plank crossing" or "wooden platform" requiring the services of carpenters was installed. Many years of custom and practice under Rule 52 support this conclusion.

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.