

Award No. 13377
Docket No. MW-13444

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
GRAND TRUNK WESTERN RAILROAD COMPANY

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

(1) The Carrier violated the Agreement for the period beginning with March 21, 1961 and extending through March 29, 1961, when it assigned a track department employe instead of a B&B inspector to inspect the installation of a ten (10) inch casing and a six (6) inch gas main underneath the Carrier's tracks by the Consumers' Power Company.

(2) B&B Inspector C. S. Houck now be allowed fifty-six (56) hours of straight-time pay.

EMPLOYES' STATEMENT OF FACTS: Beginning on March 21, 1961 and extending through March 29, 1961 the Consumers' Power Company was engaged in the work of installing a 10 inch casing and a 6 inch gas main underneath the Carrier's tracks at Mile Post 103.44. It was necessary that this work be inspected to protect the Carrier's tracks and train operations.

The Carrier assigned a track department employe to perform such inspection work, and he consumed a total of 56 hours in performing this service.

The Agreement in effect between the two parties to this dispute dated October 1, 1954, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The Claimant's assignment to the position of B&B Inspector was made known in a bulletin reading:

"GRAND TRUNK WESTERN RAILROAD COMPANY

Durand, Michigan, April 6, 1959
File: B-4410

BULLETIN NO. 11.

amination of the record satisfies us that Petitioner has neglected to support its contentions by competent evidence. The Carrier's 'Rules for Maintenance of Way and Structures' do not cover the labor work under question, and Awards 3685 and 4848 therefore are not helpful. The seniority rules do not affect the situation, since there is no question in this case as to claimants' rights to work that belongs to them; the point is that before the cited rules and principles can come into play, it must first be established, by affirmative proof, and not by mere argument, that all labor work involved in moving a tool house belongs to the Bridge and Building Department employees. This the Petitioner has failed to do, and the claim will be denied. See Awards 9001, 8092, 7963, 7947, 5869."

The instant claim, not being supported by either the Working Agreement or the past practice in effect on this property, should be denied, and Carrier requests that this Board so award.

This claim has been handled in the usual manner on the property, up to and including the Vice President and General Manager.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant contends that beginning on March 21, 1961, and extending through March 29, 1961, the Consumers' Power Company was engaged in the work of installing a 10 inch casing and a 6 inch gas main underneath the Carrier's tracks at Mile Post 103.44; that it was necessary that this work be inspected to protect the Carrier's tracks and train operations; that Claimant's assignment to the position of B&B Inspector was made known by a bulletin based on letters of understanding between the Carrier and the Organization as to the functions of a B&B Inspector.

It is the position of the Carrier that Claimant was regularly assigned and was working out of Hamburg, Michigan; that Claimant Houck was also assigned through bid as a B&B Inspector; that the bulletining of a position does not create any exclusive right, as contended for by Claimant; that the Engineering Department of the Carrier had approved plans submitted by the Consumers' Supply Company and advised that the only inspection required by Carrier would be performed by a Section Foreman, such inspection to consist of a check of the track and roadbed once or twice a day to insure that the track was in safe operating condition at Mile Post 103.44; that such work does not require the services of a B&B Inspector, but is the responsibility of the Track Department in the regular performance of their duties.

The bulletin of a position, though it includes a reference to a specific type of work, does not of itself confer that work to the employees of that particular craft to the exclusion of all other crafts.

Carrier acting in good faith has the right to determine the amount of inspection or supervision it requires in a certain operation.

It is quite significant that in a letter from the Assistant General Chairman to the Vice President and General Manager we find the following statement:

"I agree with Mr. Maughan that it is the Track Department's responsibility to maintain the track in an operational manner. However, the installation and maintenance of pipe, tile, drainage and

bridges are the responsibility of the Bridge and Building Department."

There is no denial in the record that what the Section Foreman did was to observe whether or not the track and roadbed were in safe and operating condition; there is no indication that he inspected the installation of the pipes or casing, nor any of the construction work.

The service of a B&B Inspector is usually required in connection with a project which in Carrier's estimation requires close surveillance and inspection, whereas the services of a Section Foreman are utilized in projects requiring only general observation of the track and roadbed in the immediate vicinity.

The record is silent as to any past practice on this property of a B&B Inspector being used in the type of inspection involved here.

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

The Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.