

Award No. 14395
Docket No. MW-12495

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when, on November 10 and 11, 1959, it assigned five sectionmen to assist Road Carpenter T. A. Beard and his Helper in repairing Bridges D-4.7 and D-18.2 and failed and refused to compensate the aforesaid employes at the applicable higher Bridge and Building rates of pay while so assigned.

(2) The decisions by Chief Engineer Cooper, dated February 5 and 17, 1960, and the decision by Contract Counselor Steel dated April 14, 1960, were not in conformance with the requirements of Sections 1(a) and (c) of Article V of the August 21, 1954 Agreement.

(3) Because of the violations referred to in Parts (1) and (2) of this Statement of Claim, the Carrier now be required to allow the claim as was presented by General Chairman McGlaughlin under date of December 29, 1959.

EMPLOYES' STATEMENT OF FACTS: The facts surrounding the presentation of this claim are substantially set forth in the letter of claim presentation which reads:

"December 29, 1959

Mr. S. A. Cooper, Chief Engineer
Gulf, Mobile & Ohio Railroad Co.
Mobile, Alabama

Dear Sir:

On November 10, 1959, five (5) Sectionmen and the Section Foreman at Suquelena, Mississippi, worked four (4) hours each assisting Mr. T. A. Beard, Road Carpenter, and his Helper, in making repairs to Bridge D4-7 near Meridian, Mississippi.

nature of the work is such that it requires a larger force, a foreman and gang will be used. However, temporary vacancies of Road Carpenter, Road Carpenter Helper and Road Carpenter Laborer may remain unfilled for a period of three days."

OPINION OF BOARD: At the outset we must treat with Organization's allegation that Carrier's original handling of this claim violated the August 21, 1954 Agreement.

Organization's letter of claim was addressed to Carrier's Chief Engineer on December 29, 1959.

While it is true that Carrier's original response to the claim, dated February 5, 1960, failed to deny the claim and give the reasons in writing for its disallowance, the sixty day period granted Carrier by the August 21, 1954 Agreement had not then expired.

Carrier wrote the Organization on February 17, 1960 affirming in writing information, given orally at a conference in Mobile, that the claim was denied because it "was not supported by the rules agreement."

Carrier's written denial of the claim meets the requirements of the agreement. We note that the sixty days allowed Carrier for this purpose had, on February 17, 1960 another ten days to run. Such a denial, or amended denial, is acceptable under Award 12509.

With respect to the merits of the claim, Organization is claiming a rules violation when Carrier assigned five section men to assist the Road Carpenter and his helper in repairing two bridges.

Here the Carrier assigned a Section Foreman and five Sectionmen to assist Road Carpenter Beard, who has an independent headquarters, and his helper in performing bridge repair work.

We have, in the applicable agreement, a provision which clearly states that a "road carpenter, having an independent headquarters, may be used to perform B&B work, when necessary, he may use two other employees, the first being a helper and the second a laborer. When the nature of the work is such that it requires a larger force, a foreman and gang will be used."

Carrier describes the work as "emergency repairs to damaged stringers." It concedes the repairs were made by the road carpenter and his helper, and five section laborers to carry timbers, handle jacks and perform similar laborer's work. It acted similarly on a subsequent occasion November 11, 1959.

Where, as here, the rules agreement specifically grants the Carrier certain rights with respect to work performance, and there outlines the manner in which it may be performed, and by whom, the Carrier is required to follow such rules.

The work here was repair of two bridges; it was B&B work and it should have been performed by them. Therefore the employees used shall now be paid in accordance with Rules 11 and 37.

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 violated.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of May 1966.