

Award No. 14687
Docket No. MW-12750

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) The Carrier violated the effective agreement when it compensated Yard Foreman P. E. Kennemer at Section Foreman's rate of pay and Section Laborers J. O. Daugherty, Leonard Coffman, W. M. Penn, N. A. Jones, and John L. Jones at section laborer's rate of pay for the time they were engaged in rebuilding Bridge 703-4 on August 13, 1960, a total of 19 hours and 20 minutes.

(2) That P. E. Kennemer (Yard Foreman) be paid the difference between Yard Foreman's rate of pay and Bridge Foreman's rate of pay, and that the laborers mentioned in Part 1 of this claim be paid the difference between section laborer's rate of pay and bridge and building mechanic's rate of pay for services as rendered in performing the work referred to in Part 1 of this claim at time and one-half rates of pay.

EMPLOYES' STATEMENT OF FACTS: On August 13, 1960, the Carrier assigned the claimants to perform work traditionally and historically recognized as bridge and building work in rebuilding Bridge 703-4. The work consisted of unloading, assembling and applying bridge and building material such as bridge stringers, bridge caps, bridge ties, guard rails, and changing out rails incident to repairs to the bridge, which had been destroyed by fire. August 13, 1960 was one of the designated rest days for this gang. Services rendered was preponderantly that of bridge and building work.

The claimants were not "recruited from the regular section force at the point of work."

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

The controlling Agreement, No. DP-173, effective September 1, 1949, and the National Agreement of August 21, 1954 to which both this Carrier and the Brotherhood of Maintenance of Way Employees are parties, are on file with the Third Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: After a fire on Bridge G-703.4 near Gainesville, Texas, on August 13, 1960, Carrier assigned a Bridge and Building Gang from Denison, Texas consisting of a Foreman and three Bridge Mechanics to repair the damaged bridge. In addition, it sent from its section force at Gainesville, Texas, a Foreman and one laborer, as well as a Section Foreman and five Section Laborers.

Yard Foreman and the Section Laborers named in the Statement of Claim maintain that the work they performed consisted of unloading, assembling and applying bridge and building material such as bridge stringers, bridge caps, bridge ties, guard rails, and changing out rails incident to repairs to the damaged bridge, work preponderantly that of bridge and building character. Relying on the Composite Service Rule, Article 15, Rule 1, Claimants request compensation for August 13, 1960 at the Bridge and Building Mechanic rate.

Carrier takes the position that the claim should be dismissed because it was not filed within the time limit provisions of Article V, Section 1 (c) of the August 21, 1954 National Agreement. As has been held in numerous awards including Award No. 11665 of this Referee, we find that the filing of the employees' notice of intention when received within the specified time, as was done in the case at bar, is in compliance with the National Agreement. The claim is therefore, properly before this Board.

Carrier denies that the section men performed work that could be considered Bridge and Building Mechanic work, and therefore, states that Rule 1 of Article 15 was not violated. It alleges that the laborers assisted the Bridge and Building Gang in unloading heavy bridge material from trucks and carrying it to the bridge, which is work properly assigned to laborers under Article 5, Rule 11, hence the Agreement was not violated and Claimants received proper compensation.

For Claimants to be eligible for the higher rate of pay under Rule 1 of Article 15, they must give evidence that on August 13, 1960, the dominant character of the work that they performed was Bridge and Building Mechanic work.

Although the General Chairman described the work which he alleges the Claimants performed, the record does not include supporting evidence. After Carrier declined the claim because "the section men did not do Bridge and Building Mechanic work and you have not shown that they did," the General Chairman did not submit proof to substantiate his allegation. Although a statement of an eye witness was read to the General Chairman in conference to the effect that the work consisted largely of work normally performed by track forces and involved assisting Bridge and Building Department forces in the handling of heavy bridge materials, the General Chairman again did not come forward with probative evidence to support his position that the work was Bridge and Building Mechanic work. Moreover, the record discloses that the bridge was not totally destroyed by fire and that there were experienced bridge men to restore it to use.

Since we find that there is lack of competent evidence that the preponderance of the work performed by Claimants was Bridge and Building Mechanic work, their claim for a higher rate of pay in accordance with the provisions of Rule 1, Article 15, is 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 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 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 29th day of July 1966.