

Award No. 14981
Docket No. MW-15765

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted employees holding no seniority rights under the scope of the Agreement in effect on the territory formerly comprising the Minneapolis and St. Louis Railway Company to perform a total of 2400 man hours of B&B work on the Minneapolis and St. Louis Division during the period from July 21 to October 26, 1964 inclusive. (Carrier's Files 81-25 and 81-25-9.)

(2) B&B Foreman E. M. Erickson, B&B Carpenters M. A. Schlumpberger, F. E. Woodrow, G. L. Anderson and D. J. Fahey each be allowed 480 hours' pay at their respective straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: During the period from July 21 to October 26, 1964, inclusive, the Carrier assigned one bridge and building foreman and five carpenters, none of whom hold seniority under the scope of the Agreement, to perform a total of 2400 man hours of B&B work on the Minneapolis and St. Louis Division. The B&B work performed by these outside forces consisted of building, repairing and/or installing bridges, culverts and/or highway crossings; the movement of a section house; the driving of piling and other related B&B work.

The claimants have established and hold seniority rights in their respective classes on the M&St.L Division and are regularly assigned members of B&B Gang No. 6. During the period involved in this dispute, the claimants were engaged in routine B&B work. They could have performed all of the subject work had the Carrier assigned them to it.

Although the Minneapolis and St. Louis Railway Company has merged with the Chicago and North Western Railway Company and is now the Minneapolis and St. Louis Division, separate Agreements continue to respectively control on the territories formerly comprising the two separate railroads. Since the violations upon which the instant claim is based occurred on

employee, assisted because none of the Gang 6 men would climb the leads to position the piles.

During nearly all times involved in the two claims while the CStPM&O Gangs 2 or 1 were performing any part of the work complained of, M&StL Gang No. 6 was also at the scene engaged in performing work on the same facility. In other words, the claimants in this case, Gang 6, were fully engaged in performing work on the same facility during the same hours as Gangs 2 and 1 worked on these jobs. Claims have been presented in this case that the five individuals comprising Gang 6 be additionally compensated for the hours spent by employees from Gangs 2 and 1 in assisting Gang No. 6 in performing the work. Claim has been denied.

During none of the time Gangs 2 and 1 were assisting Gang 6 in performing this work were there any B&B employees furloughed on the former M&StL. As a matter of fact, no employees on the former M&StL were furloughed on completion of the work, and all remained in service at least until March 1965.

OPINION OF BOARD: This dispute involves the consolidation of two similar claims by the same named claimants. In the first claim, the Organization contends that Carrier required or permitted the Chicago, St. Paul, Minneapolis & Omaha System Division B&B forces to perform work on a portion of track on the M&StL Minneapolis Terminal through and including Hopkins, Minneapolis Railway Transfer and Minneapolis Industrial Railway covered by the Minneapolis & St. Louis System Division Agreement for a total of 1312 hours. The second claim is based on the Organization's contention that Carrier required or permitted the Chicago, St. Paul, Minneapolis & Omaha System Division B&B forces who hold no seniority on the M&StL Division to perform work on certain bridges for a total of 720 hours. The Minneapolis & St. Louis Railway Company has merged with the Chicago and North Western Railway Company and is now the Minneapolis and St. Louis Division. However, separate agreements continue to respectively control on the territories formerly comprising the two separate railroads. Since the alleged violations upon which this claim is based occurred on the Minneapolis & St. Louis Division, this claim is controlled by the Agreement between the Minneapolis & St. Louis Railway Company, the Railway Transfer Company of the City of Minneapolis, and this Organization.

It is agreed between the parties to this dispute that the work performed on the Minneapolis Industrial Railroad (MIR) is outside the agreement, but Claimants contend that this issue was never raised on the property and therefore cannot be considered by this Board. However, by making claim for work performed outside the agreement, Claimants are asking this Board to write an agreement between the Organization and the MIR. This the Board cannot do. The function of this Board is to interpret existing contracts. Here the claimants have no agreement to interpret and therefore no valid claim for work performed on the MIR.

The claim for work performed on the M&StL Minneapolis Terminal and the Minneapolis Transfer presents a different question. This area is covered by an agreement and Claimants own the work available. Carrier violated the agreement when it assigned employees not covered by the agreement to perform B&B work. Carrier contends that Claimants had fallen behind in their work on certain bridges within the City of Minneapolis; that the City was pushing for an early completion date; and that there were no furloughed em-

ployes available to augment Claimants' gang. These contentions are not supported by the record. Although throughout its submission, Carrier mentions early completion dates and urgency of early completion, there is no evidence of such an urgency. Therefore, these statements must be looked upon as self serving conclusions and cannot be considered in resolving the issue herein. Consequently, we find that the Carrier violated the agreement when it assigned employes not covered by the agreement to assist Claimants on the Minneapolis and St. Louis Division. We will sustain paragraph 1 of the claim, except for that portion of work performed on the MIR.

Carrier has injected the issue of damages by contending that claimants herein were fully employed on the dates set forth in the claim and suffered no monetary loss. By raising this issue, the burden of proving monetary loss (damages) was placed on the Claimants (Award 14853, Dorsey). In this dispute, the record is void of any evidence that Claimants suffered monetary loss. It may be that Claimants did lose work on overtime or rest days, but this Board is without power to speculate. There is no showing by Claimants that the work could have been performed during overtime hours or on rest days.

In absence of proof that Claimants suffered a monetary loss, this claim represents a request for a penalty. This Board is without authority to assess a penalty (Awards 13958, Dorsey; 13154, McGovern and 14853, Dorsey). Therefore, we will deny Paragraph 2 of the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier violated the Agreement as set out in Paragraph 1 of the claim, except for work performed on the Minneapolis Industrial Railway.

AWARD

Paragraph 1 of the Claim sustained except for work performed on the Minneapolis Industrial Railway.

Paragraph 2 of the Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1966.

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