

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it failed and refused to compensate Track Department employes J. M. Logan, D. E. Barnwell, R. F. Wileman, Bruce Pope and O. J. Black at appropriate B&B rates of pay for services performed on September 16, 21, 28; October 13, 14, 18, 19, 1965. (System Case 211 MofW/SLS-27-T-65)

(2) (a) Claimant J. M. Logan be allowed the difference between what he should have been paid at the B&B Foreman's rate of pay and what he was paid at the Track Foreman's rate of pay for the services performed on September 16, 21 and 28, 1965.

(b) Claimant O. J. Black be allowed the difference between what he should have been paid at the B&B Foreman's rate of pay and what he was paid at the Track Foreman's rate of pay for the services performed on October 13, 14, 18 and 19, 1965.

(c) Claimants D. E. Barnwell, R. F. Wileman and Bruce Pope be allowed the difference between what they should have been paid at B&B carpenter's rate of pay and what they were paid at track laborer's rate of pay for services rendered on September 16, 21, 28; October 13, 14, 18 and 19, 1965.

EMPLOYES' STATEMENT OF FACTS: On September 16, 21, 28 and October 13, 14, 18 and 19, 1965, the Carrier assigned the claimants named within Part (2-c) of the Statement of Claim to assist a B&B crew perform the work of mixing and pouring concrete for bridge pedestals at Brush Creek near Hackleburg, Alabama. On September 16, 21 and 28, 1965, the aforementioned claimants were supervised by Claimant J. M. Logan and on October 13, 14, 18 and 19, 1965, they were supervised by Claimant O. J. Black.

The work performed by the claimants is of the character which has historically been recognized as work belonging to and exclusively performed

OPINION OF BOARD: The claim herein is that two Track Foremen be allowed the difference between what they would have been paid at the Bridge and Building Foreman's rate and what they were paid at the Track Foreman's rate for the dates specified in the claim, and that three laborers be paid the difference between Bridge and Building carpenter's rate of pay and what they were paid at track laborer's rate for services rendered on the dates involved.

Under Rule 2 of the Agreement the Track Department constitutes one sub-department and the Bridge and Building Department constitutes another, and the seniority rights of all employees are confined to the sub-departments in which employed except Group 1, Roadway Machine Department. The Roadway Machine Department is not involved in our present dispute. Thus, employees in the Track Department have no rights to work in the Bridge and Building Department and employees in the Bridge and Building Department have no rights to work in the Track Department.

The work performed by the Track Department employees and constituting the basis for the claim herein was in connection with maintenance work on a bridge located at Brush Creek, Alabama. This was work in the Bridge and Building Department, and properly accrued to employees of that Department. It was not work of the Track Department.

The Petitioner describes the work performed by the track laborers as —

“ * * * the claimant track department employees performed the work of placing the sand, gravel, cement and water, in their proper proportions and sequence, into the concrete mixer, and then, after the concrete was mixed, they transported and poured it into the forms for the bridge pedestals.”

In the handling of the dispute on the property the Petitioner contended that the track forces were assigned to work with and in a bridge gang to do exactly the same type of work that the bridgemen were doing, and in support of its contention submitted a letter from foreman Logan reading in part —

“We done every kind of work B&B Foreman and carpenters done except using trowel finishing off cement.

We transported sand, gravel and cement to mixing machine and put in Hoper [sic] of mixing machine and helped put cement to foundation where it was finished.”

On the property the Carrier contended that the work performed by the trackmen was the transporting of sand, gravel and cement to the mixing machine. In its submission to this Board the Carrier contends that Bridge and Building Department employees performed all the skilled work including the mixing and pouring of concrete. As this represents an affirmative defense by the Carrier, it was incumbent upon it to come forward with evidence in support thereof, which it has not done.

We agree with the argument by and on behalf of the Petitioner that the handling of sand, gravel and cement to the concrete mixer and from the concrete mixer to the bridge pedestal forms was an integral part of the repairs to the bridge. We cannot agree with the Carrier that the work involved was in the category of transporting material to the work site.

The claim will be sustained.

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 Agreement was violated.

AWARD

Claim sustained.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of October 1968.