

 Award No. 18342
Docket No. MW-18742

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when, from February 3 through February 19, 1969, it assigned and used Bridge and Building Sub-department forces instead of Track Sub-department forces to perform roadbed stabilization work at Mile 73, L.H.&St.L. (System File 1-12).

(2) Section Foreman D. A. Kendall, Section Laborers J. L. Brooks and E. Alexander each be allowed ninety-six (96) hours' pay at their respective straight time rates of pay and that Section Laborer T. L. Carter be allowed forty (40) hours' pay at his straight time rate of pay because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier was engaged in a roadbed stabilization project, hereinafter referred to as a "tie rail job," at Mile 73, L.H.&St.L. The work consisted of driving pile rail three (3) feet apart on each side of the track, then digging a trench underneath the track at nine (9) foot intervals to install a tie rail, followed by placement of a full length stabilizing rail and welding it to the tie rail.

Prior to this instance, the Carrier's Bridge and Building forces drove the pile rail and track forces installed the tie rails and the stabilizing rails.

From February 3 through February 19, 1969, the Carrier assigned and used Bridge and Building Subdepartment employees to perform track department work in connection with this project which consisted of digging the trenches underneath the track and installing the tie and stabilizing rails.

The claimants were available and fully qualified to perform the work involved here. Work of this character has traditionally, customarily and historically been performed by the Carrier's Track Subdepartment employees as will be noted from the following quoted letter.

causing damage to embankments supporting its track. In order to accomplish the desired results, a B & B gang was used to drive rail piling, four feet apart, in the embankment on each side of the rail. A rail was then inserted under the track and welded to the piling on each side of the track. In addition, to lend support to the piling, a rail was also welded to the piling on each side of the track, this latter rail running parallel with the track.

Employees admitted that the B & B employees had the right to drive the piling, but claimed that trackmen should have been used to insert or dig in the tie rails under the tracks, and filed claim in favor of Foreman D. A. Kendall and his crew. The claim was based on an alleged violation of Rule 5 (a). Carrier saw no basis for the claim and it was therefore declined. Copy of the claim and copies of correspondence exchanged in therewith are attached and identified as Carrier's Exhibits "A" through "H."

There is on file with the Third Division a copy of the current working rules agreement and it by reference is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization's position herein is that the work involved here was the maintenance (stabilization) of ballasted track and roadbeds and that such work has been and is the customary, traditional and historical work of the Carrier's track forces.

Carrier's defense to this claim is that Rule 5 (a) does not reserve to trackmen the exclusive right to install or dig in the tie rails; that the Organization offered no proof that trackmen had always performed such work; that this is nothing other than a penalty claim inasmuch as Claimants were working at least 40 hours per week.

It is seen that conflicting assertions were made by the parties hereto without substantive proof, namely, as the Organization is contending, that the work in question is the customary, traditional and historical work of Carrier's track forces, and, as the Carrier contended on the property, that it has been the practice in the past for rail piling to be driven and tied together by B & B forces.

In view of the conflicting assertions which cannot be resolved, we will dismiss the claim for Claimants' failure to satisfy the burden of proof herein. See Award No. 13330.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Claim will be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1970.