

 Award No. 18628
Docket No. MW-18826

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)**

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

(1) The Carrier violated the Agreement when, on February 1, 1969, it used Track Sub-department employes instead of Bridge and Building Sub-department employes to repair a guard rail on Bridge 28-44 at Oak Harbor, Ohio (System File MW-BRS-69-7).

(2) B&B Foreman R. L. Singler, and Carpenters P. J. Evans, J. C. Barber and R. J. Kubiak each be allowed two (2) hours and forty (40) minutes pay at their respective time and one-half rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On February 1, 1969, an "extra, out of Ironville, had a broken bolster which tore up crossing planks and inner guard rail on Bridge 28.44 at Oak Harbor, Ohio."

Instead of calling and using B&B forces to repair the guard rail, the Carrier used Track Sub-department employes to make such repairs. Work of this character is allocated to B&B forces by virtue of Sections (a) and (e) of Rule 40, which read:

"RULE 40.

(a) All work of construction, maintenance, repair or dismantling of buildings, bridges, tunnels, wharves, docks and other structures, built of brick, tile, concrete, stone, wood or steel, turntables, walks, platforms, snow and sand fences, signs and similar structures, as well as all appurtenances thereto, loading, unloading and handling all kinds of bridge and building material, shall be bridge and building work, and shall be performed by employes in the Bridge and Building sub-department. Construction work may be done by contract where there is not a sufficient number of properly qualified furloughed employes available to perform such work or the Railroad Company does not have proper equipment to perform it.

On Saturday, February 1, 1969, a broken truck bolster developed on a car moving in an eastbound train enroute from Ironville to Brewster, Ohio. Before the dragging equipment was discovered, the car had traversed over several miles of the territory of Section Gang No. 2. The foreman and three laborers of Section Gang No. 2 were called out to inspect the track and repair any damage caused by the dragging equipment. They proceeded eastward from their tool house located at approximately Mile Post 26, making inspection and any necessary repairs enroute. When they arrived at Bridge 28.44, they discovered that a guard rail had been torn loose. In order to proceed safely over the bridge with their motor car, the men spiked the guard rail back in place, consuming about 15 minutes and using about 20 track spikes.

The claim here made contemplates that B&B forces should have been called out to spike down the guard rail in this emergency situation. Copies of correspondence, reflecting the handling on the property, are attached as Carrier's Exhibits A through H.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose when on Saturday, February 1, 1969, a broken truck bolster developed on a car moving in an eastbound train enroute from Ironville to Brewster, Ohio. The dragging equipment damaged several miles of track and tore a guard rail loose at Bridge 28.44. Carrier called out a Foreman and 3 laborers of Section Gang No. 2, Track Sub-department employes, to inspect and repair the track. When arriving at Bridge 28.44, this Section Gang discovered the damaged guard rail and proceeded to repair the same. Claim was filed on behalf of B&B Claimants and the Organization relies upon Rule 40 to establish their contention that B&B Forces have the exclusive right to construct, maintain and repair bridges. Carrier contends that it was necessary to assign track forces to perform the work in question because an emergency situation existed at the time, and that it was necessary that the guard rail be repaired in order that the track forces could proceed across the bridge with safety. The Organization alleges that no emergency existed, because the track at this particular bridge was not damaged, and that the trackmen could have completed their inspection and repair of the track without repairing the guard rail. The Organization also contends that the burden of proof of an emergency, an affirmative defense, is on the Carrier, and that they have failed to sustain their burden of proof.

This Board finds that Rule 40(a) confers the work involved in this dispute to Claimants. The record does not support Carrier's allegation of an existing "emergency" situation. Rule 40(a), absent probative evidence of an emergency situation, is clear and free from ambiguity and, therefore, not subject to more than that interpretation which grants bridge repair work to the members of the Brotherhood of Maintenance of Way Employees' Organization. This 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1971.