

Award No. 19028
Docket No. MW-19222

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned track forces instead of B&B forces to haul and to install culvert pipes on February 4 and 5, 1969 (System File 1-4/E-304-4).

(2) B&B Foremen M. C. Harber and C. Hurst; Carpenters C. R. Sivils, T. Walker and C. W. Greer; Helpers J. G. Chadwell, J. F. Brooks and J. V. Hall; Laborers C. Ellison, M. D. Brittain, M. H. Miracle and B. K. Parsley each be allowed 16 hours' pay at their respective straight time rates of pay because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants all hold seniority within the B&B Sub-department and they are regularly assigned to positions within their respective seniority ranks.

The character of work reserved to and traditionally performed by employees within the B&B Sub-department is described in the following quoted rule:

"RULE 41. BRIDGE AND BUILDING WORK

41(a) All work which is done by Company forces in the construction, maintenance, repair, or dismantling of bridges, buildings, tunnels, wharves, docks, water tanks, turntables, platforms, walks, and other structures built of brick, tile, concrete, wood or steel the painting of bridges, buildings, docks, platforms, walks, turntables, tanks and other structures, hand rails in buildings and on bridges, and the erection and maintenance of signs attached to buildings or other structures, shall be performed by employees of the bridge and building subdepartment.

* * * * *

41(e) Concrete gangs or gangs doing drainage or pipe-line work may consist of all laborers, except sufficient carpenters and helpers as are necessary to build forms, or take care of work other than

excavating, back filling, etc. Work such as excavating, back filling, mixing and placing of concrete may be done by laborers."

* * * * *

On February 4, 1970, a district extra gang foreman, a section foreman and ten (10) section laborers hauled three (3) culvert pipe to Mile WE-216 on the Yellow Creek Branch on the CV Division. The culvert pipes, two (2) of which were 18 feet long and 3 feet diameter and the other 20 feet long and 3 feet diameter, were hauled on two (2) "truck cars" (small flanged wheel cars) towed behind a hi-rail truck. On February 5, 1970, the aforementioned track forces installed the culvert pipes.

The work of installing culvert pipes is work that is encompassed within Rule 41, specifically Section (c) thereof, and, therefore, it is work of a character that is contractually reserved to B&B forces. Heretofore, the Carrier has customarily and traditionally assigned B&B forces to perform all work of this character. The claimants were available and would have willingly performed this work if the Carrier had so desired.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated May 1, 1960, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On February 4, 1970, two track department gangs trucked, via two truck cars coupled to a hi-rail truck, two 18 ft. pipes and one 20 ft. pipe to a work site on carrier's Yellow Creek Branch of its Cumberland Valley Division and on February 5 these same gangs installed the pipe.

Employees claimed that the working rules agreement between carrier and its employees represented by the Brotherhood of Maintenance of Way Employees was violated when the track subdepartment employees performed the work on February 4 and 5 and filed claim of Bridge and Building Subdepartment employees, it being their position that such employees had exclusive right to the work.

Carrier did not agree that there was any violation of the agreement on either date and consequently declined the claim. Copies of correspondence exchanged in connection with the claim are attached and are 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: On February 4, 1970, two track department gangs trucked, via two truck cars coupled to a hi-rail truck, two eighteen (18) foot pipes and one twenty (20) foot pipe to a work site on Carrier's Yellow Creek Branch of its Cumberland Valley Division and on February 5, 1970, these same gangs installed the pipe.

Claimants, Bridge and Building Department employees, contend they were entitled to perform the work on February 4 and 5, 1970, as provided for in the parties' Agreement, Rule 41(a) and (e) which reads:

"RULE 41. BRIDGE AND BUILDING WORK

41(a). All work which is done by Company forces in the construction, maintenance, repair, or dismantling of bridges, buildings, tunnels, wharves, docks, water tanks, turntables, platforms, walks, and other structures built of brick, tile, concrete, wood or steel, the painting of bridges, buildings, docks, platforms, walks, turntables, tanks and other structures, hand rails in buildings and on bridges, and the erection and maintenance of signs attached to buildings or other structures, shall be performed by employees of the bridge and building sub-department.

* * * * *

41(e) Concrete gangs or gangs doing drainage or pipeline work may consist of all laborers, except sufficient carpenters and helpers as are necessary to build forms, or take care of work other than excavating, back filling, etc. Work such as excavating, back filling, mixing and placing of concrete may be done by laborers."

Carrier contends that Claimants did not have the exclusive right; (1) to truck the pipe to the work location on February 4, 1970 and; (2) Claimants do not have the exclusive right to install pipe for drainage purposes. Carrier asserts that track department employees have heretofore installed small pipes.

The Organization relies upon the clear language of Rule 41(a) and (e) in support of its contention that the involved work has been contracted to the Bridge and Building employees. While Carrier has asserted that track department employees have heretofore installed small drainage pipes, a review of the record finds no evidence to support Carrier's assertion. In passing, from the description of the size of pipes involved here, they could hardly be considered small.

In the opinion of the Board, Rule 41(a) and (e) clearly contemplates installation of pipe as within the purview of Bridge and Building work. Furthermore, work incidental, such as hauling the pipe to the work location, is inter-related to the primary project of installing the pipe and rightfully is work of Claimants. We, therefore, sustain Part (1) of the claim.

In regard to the question of damages, Carrier argues that Claimants, being fully employed during the period of this dispute, suffered no loss of earnings and to assess damage would be nothing more than a penalty.

A close review of the record clearly shows that such a contention, as urged by Carrier, was not raised on the property and since this Board has held on numerous occasions that issues not raised during the handling on the property cannot be considered by this Board, then Carrier's belated contention on the monetary claim cannot now be given any consideration. We, therefore, sustain Part (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 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 Agreement was violated.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1972.