

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20380
Docket **Number** MW-19630

John H. Dorsey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Burlington Northern Inc.
(Formerly Northern Pacific Railway Company

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

(1) **The** Carrier violated the Agreement when it assigned Store Department employees instead of B&B Department employees to build racks for the storage of rails and frogs at Brainerd, Minnesota during the period extending from May 19 to May 29, 1970 inclusive (System file **MW-84 8/28/70.**)

(2) **B&B** employees D. C. Smith, A. L. **Ramsdell**, A. M. **Novotny**, A. H. **Berndt**, R. L. Dixon, J. **E. Swartout**, L. L. **Felton**, D. L. Hyatt, L. C. Hyatt, R. C. **Carlson**, J. L. **Brennan** and G. L. **Ramsdell** each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours expended by Store Department employees (296 **hours**) in the performance of the **work** referred to within Part (1) of this claim.

OPINION OF BOARD: Carrier maintains one of its major shop facilities at Brainerd, Minnesota. In conjunction therewith it maintains a large Store Department which handles materials not only for the Shop Facility at Brainerd. Included in the materials handled are switch points, frogs and guard rails. Because of the size of said materials they had been stored out of doors on material skids located **at** the extreme easterly end of the rail storage yard rather than in the **50' x 300'** Store Building. The location was adjacent to track facilities but not readily accessible for highway vehicles. In order to facilitate the handling of material orders by highway, Carrier decided to relocate the aforementioned track **material approximately** 150 yards, in an easterly direction, so that **it** could be loaded either on highway vehicles or on rail cars.

Beginning May 9, 1970, Carrier assigned a number of Store Department employees to perform **the** work of constructing racks, at the newly selected location, on which to store rails and frogs. The racks were constructed of second hand bridge timbers. The construction work required that foundation blocks be cut to the required length, placed at required intervals at precisely the proper elevation so as to provide a level base on which to place the cross timbers. The cross timbers were also cut to the required

length before they were placed on and fastened to the foundation blocks with spikes. The tools used in the construction work included, inter alia, a chain saw, a framing square, carpenter's level, chalk line, drills, hammers. MW, Petitioner herein, alleges that: (1) the construction work involved consumed 296 hours; (2) contractually the work was **reserved** to **B&B** Subdepartment employees. On the other hand, Carrier states that: (1) the Scope Rule of the MW **Agreement** is general in nature; (2) **MW** failed to prove that work of the kind was by history, tradition and custom, on a system wide basis, the exclusive work of B&B employees; (3) the work was incidental to the duties of the Store Department employees; and (4) Carrier "estimates" that the total work time **consumed** in **the construction** of the racks was 60 hours and any additional time was devoted to Store Department employees moving stores from the old location to the new.

Carrier correctly categorized the MW Scope Rule as general in nature. But, in a Letter of Agreement, between the parties herein, dated September 12, 1962, it **is** stated

Employees included within the scope of the agreement effective December 1, 1962 between the Northern Pacific Railway and the Brotherhood of Maintenance of Way **Employees** perform work in the Bridge and Building Subdepartment and in the Track Subdepartment of the Maintenance of Way Department in connection with the construction and maintenance or repairs of, and in connection with the dismantling of tracks, structures or facilities located on the right of way and used in **the operation** of the Railway Company in the performance of **common** carrier service. (Emphasis supplied.)

We also have before us our sustaining Award No. 3277, issued August 2, 1946, involving the parties herein, in which a similar issue at **Brainerd** was adjudicated. In the Opinion of the Board in that Award we stated:

Whether the work belonged to Store or B&B employees is not determinable solely **from** its temporary or permanent character. Clearly, there is bound to be temporary **B&B** work performed in and around the Stores Department of such magnitude that it belongs solely to **B&B** employees. On the other hand there is bound to be permanent B&B work in the Stores Department in such small amounts that it can well **be** treated as incidental to the work of employees in the Stores Department. While there is much that can be said on both **sides of** the question, we are of the opinion that the excavating for and the laying of sleepers and sills for **a** temporary runway 7 feet wide and 140 feet long is work within the scope of the Agreement of the Maintenance of Way employees. While we think the temporary bracing or planking of runways and platforms to meet the necessities of the occasion in handling store materials,

or even the ~~making of~~ minor permanent repairs, are **incidental** to the work of Store employees and may properly be performed by them, we do not think it can be said that work of the magnitude here described **can** be incidental to the work of employees in the Stores Department. There is evidence of a small amount of sawing and spiking being done. While we do not deem it sufficient to provide a proper basis for determining to which group the **work** belonged **in** the present **case**, it does tend to support the position taken by the B&B employees. The claim will be allowed for the **number** of hours shown by the joint check to have been worked on the runway here involved.

Predicated on Award No. 3277 and the Letter of Agreement dated September 12, 1962, we find that the work of constructing the rack structure at **Brainerd** in the period May 19 to May 29, inclusive, was work reserved to **B&B** employees. We, therefore will sustain paragraph **(1)** of the Claim.

As to paragraph 2 of the Claim, neither **MW** nor Carrier proved by substantial evidence of probative value the actual work **time** employed in the construction of the rack at **Brainerd**. **MW** avers it **was** 296 hours which it seeks to support only by a self serving declaration that the amount of **time** in actual construction of the work was observed by **B&B** employees -- nothing more. Carrier says it kept no records of the amount of time devoted to construction of the racks by Store Department employees; but it "estimates" 60 hours. Consequently, we are compelled to sustain paragraph (2) of the Claim only to the **extent** of 60 hours **instead** of the 296 hours alleged in said paragraph by **MW**. X

During the course of the proceedings the Board, by certified mail served a Third Party NOTICE on the Brotherhood of Railway and Airline Clerks (**BRAC**) in the manner required by Section 3, First (**j**) of the Railway Labor Act. **BRAC** did not file a **Submission** or otherwise choose to appear.

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

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That Carrier violated the Agreement.

A W A R D

Paragraph (1) of the Claim is sustained.

Paragraph (2) of the Claim is sustained to the extent **setforth**
in Opinion, supra.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September 1974.