

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21654
Docket Number MW-21614

David C. Randles, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Burlington Northern Inc.

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

(1) The Agreement was violated when Track Sub-department employees instead of Bridge ~~and~~ Building Sub-department employees were used to remove spilled gravel from the deck and from the control rods of Drawbridge 0-59 at Longview Junction on December 14, 1974 (System File P-P-216C/MW-84 3/10/75).

(2) Bridge and Building Sub-department Employees O. Carter, A. E. Rogerson, C. V. Newsted, R. L. Anderson, J. F. Wileman and B. A. Andrews each be allowed six (6) hours of pay at their respective time and one-half rates because of the aforesaid violation.

OPINION OF BOARD: During the early morning hours of December 14, 1974, gravel was accidentally spilled on a draw bridge as a train was passing over it. Upon notification by the bridge tender, the Chief Dispatcher called the on-duty section crew to remove the spilled gravel. It is the allegation of the Organization that the work that was performed was the work of the employees of the Bridge and Building Department, the claimants, rather than Track/Department employees, the employees who did the work. To support its claim, the Organization refers to rules relating to the separation of sub-departments Seniority, Classification of Work and Work on Unassigned Day Rules.

A priori to the consideration of the rules involved is the contention by the Carrier that an emergency existed which precipitated the use of the Track Department employees who were available at the time. The bridge in question was a draw bridge which needed to be raised in the event that river traffic approached it.

In their ex parte submission, the Employees challenge the Carrier's contention that an emergency existed; however, the Carrier states that no such challenge was made on the property. This Board notes that a brief statement was made on the property by the Organization: "An emergency did not exist in that the work was completed on the following Monday."

The Organization itself in a letter of March 10, 1975, from the General Chairman to the V.P., Labor Relations of the Carrier states: "Bridge 0-59 is a ~~drawspan~~ and ~~must~~ be maintained in a manner to permit opening for river traffic at ~~all~~ times." This Board interprets the statement of the General Chairman, "'at all times", to be the basis for declaring an emergency situation. The cursory denial of an emergency given the statement by the General Chairman does not constitute a reversal of the validity of Carrier's judgment that an emergency existed. Consequently, the statement of the Carrier on the property that an emergency existed must be considered as fact by this Board. Award 20083 relates directly to this issue. Furthermore, numerous Awards of this Board have held that in an emergency situation the Carrier has greater latitude in assigning work. (See Award 9394, 14372.) We are satisfied that the Carrier acted in good faith to meet an emergency and, solely on that basis, deny 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 not ~~violated~~.

A W A R D

The Claim is denied.

NATIONAL RAILROAD ~~ADJUSTMENT~~ BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 18th day of August 1977.