

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22303
Docket Number CL-22203

Don Hamilton, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(~~Express~~ and Station ~~Employees~~
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul & Pacific
(~~Railroad Company~~

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8414) that:

1) Carrier violated the Clerks' Roles Agreement at Tacoma, Washington when it used an **employee** of another craft to load bridge material on March 15, 1976.

2) Carrier shall now be required to compensate the following employees for a three (3) hour call at the pro rata rate of their respective positions on March 15, 1976:

E. L. **Bartle**
M. T. Taylor
S. W. **Pinkley**
L. L. Palmer
A. W. Park

OPINION OF BOARD: The five Claimants are all regularly assigned employees in the Material Division, Seniority District No. 116, Tacoma, Washington. They filed this claim alleging that **on March** 15, 1976, the Carrier failed to call them to load bridge material. They each seek compensation for a three-hour call at the pro rata rate of their respective positions.

The Claimants allege that the Scope Rule and past practice grant them the work of loading bridge material and that the Carrier, therefore, violated the Agreement when it required employees of the B & B Department to load material for transportation to a damaged bridge. The **employees** offer in evidence a statement dated August 31, 1976, signed by D. D. Barta, a Crane operator and Local Chairman of the B.M.W.E., Local 98. The statement reads as follows:

"On March 15, 1976 I **was** the Crane (Operator Maintenance of Way **EmploYES**). This is my permanent **assignment** with the Milwaukee Railroad.

On March 15, 1976 from 11: AM to **12:15** PM, I was instructed to load emergency bridge material by Mr. **J. Gutterizz** Foreman B & B Dept. Thier (sic) was also two (2) first class **carpentars** (sic) assigned to **assit** (sic) me, on loading the material.

I stated to Mr. **Gutterizz** that this was work belonging to the Material Dept. at Tacoma. He agreed but told me to load it anyway, by order of Chief Carpenter R. L. **Shanklin** B & B Dept. (**Maint. of Way EmploYES**)

I have loaded emergency bridge material before, but was stopped by Mr. **J. G. Waldman, DMM**, because it was not our work.

This material was loaded on a tractor **trailor** (sic) rig, for shipment to **Easton, Wash.**"

(The Carrier defends the action herein by asserting an **emergency**. However, the record fails to prove that an emergency situation existed. The evidence shows that a considerable amount of time elapsed between the time the Carrier was notified of the problem and the time it instructed the **employees** to load the material. The evidence does not tend to show that the Carrier acted in a manner consistent with an emergency situation.)

The intent of the Agreement was to reserve this type work to this craft. Therefore, we find that the Agreement was violated by the assignment of the three **employees** involved.

The record clearly indicates that this work was performed by three **men** working 1 hour 15 minutes each, for a total of 3 hours 45 minutes. It is, therefore, apparent that the five men could have performed the work in 45 minutes each. Therefore, the claim for the three-hour call is not supported. The Carrier is required to compensate each of the five Claimants 45 minutes at the pro rata rate of their respective positions March 15, 1976.

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.

A W A R D

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:;


Executive Secretary

Dated at Chicago, Illinois, this **22nd** day of February **1979**.