

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24095
Docket Number MW-23899

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Terminal Railroad Association of St. Louis)

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

(1) The Agreement was violated when, on September 11, 1979, four (4) Track Department employees were used to perform Bridge and Building Department work on the 'Merchants Bridge' at Venice, Illinois (System File TRRA 1979-44).

(2) B&B Mechanics D. M. Morton, J. K. Roberds, A. Thames and T. Holmes each be allowed eight (8) hours of pay at their respective straight time rates because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: The Carrier's B&B Department employees constructed certain steps on a steep slope of an embankment using ties, timbers, guard rails, etc. There appears to be no question that said work was performed properly by the B&B employees, however certain of the Carrier's Track Department employees were engaged in unloading ballast, and they unloaded sufficient ballast to distribute same in the embankment at the location of the steps, including filling in and around the steps.

The Employees assert a violation of their agreement, including that portion which states that B&B carpenters construct, maintain and dismantle bridges, building, miscellaneous structures and appurtenances; including application of asbestos or composite materials.

The Board is unsure of the specific factual circumstances involved in the case. As the matter was handled on the property, the Employees continued to assert that they were interrupted from a completion of the task of building the steps, and that the act of the Track Department employees in spreading the ballast in and around the steps was, in reality, a completion of the project. Conversely, the Carrier continues to insist that the steps, as such, were completed, and that the Track Department employees merely spread some ballast in and around a completed set of steps. We feel that said distinction is crucial to a determination of the case, because if the spreading of the ballast, was, in fact, an integral part of the building of the steps, we would be inclined to sustain the claim. If, on the other hand, the spreading of the ballast was merely a procedure to enhance the usefulness or cosmetic value of the completed steps, then he would be inclined to deny the claim.

In the final analysis, the Employees bear the burden of proof, and we are unable to find that the evidence preponderates to the benefit of either party, and accordingly we have no alternative but to dismiss the claim for failure of proof.

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 wet the dispute involved herein; and

That the **claim be** dismissed.

A W A R D

Claimdismissed.

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

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of January 1983.

