

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24264
Docket Number MW-24259

George S. **Roukis**, Referee

PARTIES TO DISPUTE: {
 (Brotherhood of Maintenance of Way **Employes**
 Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when it failed and refused to allow Machine **Operators** B. Ellis and O. **Rodriquez** pay at the Bridge and Building Mechanic's rate for the **work** they performed on the 'Merchants Bridge' beginning June **16, 1980** (System **File** TRRA **1980-16**).

(2) **Machinie** Operators **B. Ellis and O. Rodriquez** each be **allowed** the difference between what they should have received at the Bridge and Building Mechanic's rate and what they were paid at the machine operator's rate beginning **June 16, 1980** and continuing **until** the project is completed."

OPINION OF BOARD: The basic issue before this **Board is** the appropriate application of the Controlling Agreement's Classification Rule (Rule **2**), particularly that portion delineated under the designation, General Notes, Paragraph **(b)**, which reads as follows:

"When machines manned by bulletined machine operators are used in the Bridge and Building Department, the operators will receive **ironworkers (B&B Mechanics)** rate of pay for the actual **time** worked."

Claimants argue that they were assigned with their respective machines to assist **B&B** forces in the replacement of bridge **ties on** Carrier's **Merchants** Bridge and performed maintenance of bridge work, which entitled them to be paid the ironworkers rate, in accordance with Paragraph **(b)** (**Supra**). In addition, they **contend** that Rule **39**, the Composite Service Rule, requires that employees working in higher positions will be paid the higher rate for the actual **time** worked.

Carrier asserts that Claimants were performing their assigned tasks when operating the tie handler machines in effecting tie replacements, which was work routinely performed by track machine operators within the Track **Sub-** Department. It argues that the removal and installation of ties on bridges, rather than at ground level, is not **B&B** Ironworkers work in connection with the construction, erection, maintenance and dismantling of bridges, buildings, **miscellaneous** structures and appurtenances, but track **maintenance** work which is their assigned duty.

In considering this case, the Board finds it difficult to determine precisely whether the ties were inserted on a **gravel** deck approach or the open

steel bridge. **The claim** as filed indicates that the tie replacement occurred on both ends of the **Merchants** Bridge and as such, it could well be that the ties were inserted in the **subgrade** vis the approach to the bridge. We recognize the separation of work between the respective sub **departments** as set forth by Paragraph (b) **Supra**, but we are not certain as to the exact location where the ties were replaced. Without this evidence, we are **unable** to determine whether the aforesaid **paragraph was violated** and thus we must 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 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 not violated.

A W A R D

Claim denied.

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 **23rd day** of March **1983**.

