

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26454
Docket Number XW-25905

George S. Roukis, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Union Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned Track Subdepartment forces instead of Bridge and Building Subdepartment forces to renew a plank grade crossing at Mile Post 270.27 in the vicinity of Hastings, Nebraska on November 16, 1982 (System File 4-14-13-14-54).

(2) Because of the aforesaid violation, furloughed Kansas Division Bridge and Building Subdepartment Carpenters M. M. Hoppes, T. L. **Grauer**, B. K. Anderson, L. L. Cart, D. M. Biggerstaff and M. Wilson shall each be allowed three (3) hours of pay at their respective straight time rates."

OPINION OF BOARD: On November 16 and 18, 1982, Carrier assigned and used Kansas Division Track Subdepartment Section Crews 3230 and 3231 to renew the 32-foot plank crossing at M.P. 230.27 near Hastings, Nebraska. The Organization contends this assignment violated Rules 1, 2, 3, 4, 8 and 13 of the controlling Agreement, since the work accrued to employees in the Bridge and Building Subdepartment. In particular, it asserts that within Rules 8 and 13, the parties had agreed that Bridge and Building Carpenters would perform work in connection with the installation and removal of plank crossings. It cited Third Division Awards Nos. 23832 and 24497 as supportive judicial authority.

It also submitted a statement by one of the involved six (6) Track Subdepartment employees dated January 11, 1983, which indicated that the Track forces performed work that encompassed carpentry work. Furthermore, the Organization maintains that Carrier's reliance upon Rule 13, Section 1(b) as justification for this assignment is without relevance, since no evidence was adduced proving that the work was performed in an outlying area. It points out that "one of the conditions of exemption referenced in Rule 13 1(b) was present, since Carpenters were not used to perform the contested work.

Carrier contends that the work of removing and restoring the crossing plank was incidental to the primary work performed by the Track Subdepartment employees. It asserts that the employees spent one (1) hour and fifteen (15) minutes on November 16, 1982, removing wooden planks from the road crossing and one (1) hour and forty-five (45) minutes on November 18, 1982, restoring the planks. It notes that on November 16, 17, and 18, 1982, the six (6) Track Subdepartment employees installed crossties through the crossing and lined and surfaced the track structure through the crossing. It avers that under Rule 5, it was not impermissible for Track Subdepartment employees to perform incidental work, specifically, where absent the need to

perform the track rehabilitation work through the crossing, there would have been no reason to remove and restore the crossing planks. It observes that the Organization even filed a parallel Claim on behalf of the six (6) Track Subdepartment **employees** who performed the contested work. It notes that it paid the other Claims consistent with Rules 5 and 33(e) and the past practice followed with respect to similar cross Maintenance of Way functional employment. Since Rule 5 permits incidental work, we cannot conclude that the Agreement was violated.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.