

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37367
Docket No. MW-36565
05-3-01-3-27

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

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 Agreement was violated when the Carrier assigned Bridge and Building carpenter gangs to perform steel erection work (cut, grind, weld and install steel shims/bridge shoes and steel stringers) on the bridge at Mile Post 13.02 in Portland, Oregon on October 6 and 18, 1999, instead of Northwestern District steel erection employees R. R. McDonald, D. R. Scoville, S. E. Burgus, J. L. Geiss and G. G. Perrenoud (System File J-9908-55/1213769).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. R. McDonald, D. R. Scoville, S. E. Burgus, J. L. Geiss and G. G. Perrenoud shall now each be compensated for seventeen (17) hours at their respective straight time rates of pay and nine (9) hours at their respective time and one-half rates of pay.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On the claim dates, the Claimants were members of District Steel Erection Gang 6841 and held the positions of Foreman (Burgus) Arc Welders (MacDonald, Geiss and Perrenoud) and Truck Driver (Scoville). The record shows that on both dates the District Steel Gang worked on the Spokane Subdivision located approximately 275 miles from the bridge at MP 13.02 on the Carrier's Kenton Line, at Portland, Oregon, where the alleged claim occurred. The Spokane and Portland Subdivisions were both within Gang 6841's work district, the record further establishes.

It is essentially not disputed that prior to the October 6, 1999 claim date, B&B Carpenter Gang 6821 had been working approximately two months replacing bridge ties at MP 13.02. The Organization asserts that on October 6, 1999, Gang 6821 was instructed to perform the work of "cutting, grinding and welding of 1" shims to act as bridge shoes," which was unrelated to the tie replacement work performed earlier. In the Organization's view, the work of fabricating bridge shoes belonged to the Claimants pursuant to Rule 8, Section IV of the Agreement. Furthermore, the Organization emphasized that the work of fabricating bridge shoes was not incidental to the removal of wood stringers, work subsequently assigned to Gang 6821, on October 18, 1999, as will be discussed below. Rather, the steel shim/bridge shoe fabrication work was an "integral part" of the steel stringer replacement work that the Claimants likewise were not called to perform on October 18, 1999.

The Organization then explained that on October 18, 1999, the Carrier transported B&B Carpenter Gang 6824 from LaGrande, Oregon, to Portland, in order to assist Gang 6821 with the work of installing steel stringers and the bridge shoes previously fabricated on October 6, 1999. Such work, performed by both Carpenter Gangs, clearly violated Rule 8, Section IV. According to the Organization, under that Rule provision, such steel work accrued to the Claimants,

who possessed the skill, ability and equipment to perform said work, as opposed to members of B&B Gangs 6821 and 6824, whose work was governed by Rule 8, Section I. Moreover, the Organization pointed out that positioning Gang 6824 at the bridge at Portland necessitated approximately five hours of travel, each way, because Gang 6824 had been working at LaGrande, about 200 miles away. Specifically, the Organization stated that Gang 6824, headed by Foreman McCarthy, traveled five hours on overtime to Portland, and then spent approximately three and one-half hours, from 2:00 P.M. to 5:30 P.M., installing the steel stringers and bridge shoes before tying up at 6:30 P.M.

The Organization contends that the welding of the bridge shoes on October 6 and the installation of the steel stringers and shoes on October 18, 1999 performed by B&B Carpenter Gangs 6821 and 6824 should have been assigned to the Claimants given the clear language of Rule 8, Sections I and IV. According to the Organization, Rules 1 and 4 further dictate that the Claimants should have been assigned the above work. It stresses, moreover, that Rule 8, Section I – Bridge and Building Carpenter, specifically restricts B&B Carpenters from performing “structural, iron or steel work provided for in Section IV.” The pertinent Rules cited by the Organization are quoted as follows:

“RULE 1 – SCOPE

This Agreement will govern the wages and working conditions of employees in the Maintenance of Way and Structures Department listed in Rule 4 represented by the Brotherhood of Maintenance of Way Employees Organization.

* * *

RULE 4 – SENIORITY GROUPS AND CLASSES SHALL BE AS FOLLOWS:

BRIDGE AND BUILDING SUBDEPARTMENT

- Group 1 (a) Steel Erection Foreman
- (b) Assistant Steel Erection Foreman

- (c) Bridge Welder – Arc Weld Process
- (d) Steel Bridgeman – Machine Operator
- (e) Steel Bridgeman
- (f) Apprentice Steel Bridgeman
- (g) Steel Bridgeman Helper

* * *

- Group 3**
- (a) Tunnel Foreman, Bridge and Building Foreman
 - (b) Assistant Bridge and Building Foreman,
Fence Gang Foreman and Scale Gang Foreman
 - (c) Bridge and Building
Cabinet Maker – Bench Carpenter
 - (d) Carpenter – Machine Operator
 - (e) B&B Welder
 - (f) Carpenter
 - (g) Apprentice Carpenter
 - (h) Carpenter Helper
 - (i) B&B Laborer

RULE 8 – BRIDGE AND BUILDING SUPDEPARTMENT

The work of construction, maintenance and repair of buildings, bridges, tunnels, wharves, docks, non-portable car buildings, and other structures, turntables, platforms, walks, snow and sand fences, signs and similar structures as well as all appurtenances thereto, and

other work generally so recognized shall be performed by employees in the Bridge and Building Subdepartment.

Section I – Bridge and Building Carpenter

An employee assigned to the construction, repair and maintenance of buildings, bridges or other structures, (except structural, iron or steel work provided for in Section IV), including the building of concrete forms, erecting false work, etc., or who is assigned to miscellaneous mechanic's work of this nature, shall constitute a bridge and building carpenter. (Emphasis added.)

* * *

(d) CARPENTER – FIRST CLASS. General carpenter work, laying out building and repairing buildings, bridges and miscellaneous structures, operation of wood working machines incidental thereto, building and repairing built-in office fixtures, and setting up cabinet work and milled material, and cement finishing. Must be able to read blue prints.

* * *

Section IV – Steel Erection

An employee assigned to setting of columns, beams, girders and trusses in the general structural erection and maintaining of steel in bridges, buildings, tanks, and other structures; also in the performance of related bridge and building iron work, such as riveting and rivet heating, shall constitute a steel bridgeman. (Emphasis added.)

(c) STEEL BRIDGEMAN – FIRST CLASS. Assembling and erecting bridge and structural steel, rigging lines for hoisting engines, derricks and scaffolding, handling erection details from blueprints, selecting material from yard in order of erection and doing power riveting, must be able to read blueprints. (Emphasis added.)

(d) STEEL BRIDGEMAN – SECOND CLASS. Assembling and erecting bridge and structural steel, ordinary rigging, swing scaffolds, fitting up steel work for erection, and power riveting.
(Emphasis added.)

The Organization urged that the Board carefully review the above-quoted contractual language and strongly consider its position, that based on the foregoing, structural, iron or steel work is specifically reserved to steel erection forces, as opposed to Carpenter Gangs, which, by Rule, are specifically excluded from performing such work. Given the above contract language, the exception that Carpenter Gangs will not perform such work is clear, based on the language negotiated by the parties. Rule I, Section IV – Steel Erection, explicitly provides that steel erection forces will set “columns, beams, girders, and trusses in the general structural erection and maintaining of steel in bridges, buildings, tanks, and other structures.” In contrast, Rule 8, Section I – Bridge and Building Carpenter, makes it plain that the duties of B&B Carpenters include “construction, repair and maintenance of buildings, bridges or other structures,” with the exception of “structural, iron or steel work provided for in Section IV.”

According to the Carrier, Rule 8, Section I – Bridge and Building Carpenter, paragraph (b) which was not supplied by the Organization, is highly relevant and states:

“(b) B&B WELDER. Welding, burning and cutting in connection with construction or repairs of bridges, buildings, and miscellaneous structures.”

Furthermore, the Carrier also points out that Rule 8, Section IV - Steel Erection, paragraph (a) also not mentioned above, reads:

“(a) STEEL BRIDGEMAN – WELDER – ARC WELD PROCESS. Welding, burning and cutting in connection with construction of repairs or bridges, buildings, and miscellaneous structures.”

Moreover, the Carrier stresses that the above-quoted Agreement provisions allow both B&B Welders and Steel Bridgeman Welders to perform the same welding duties, and that the welding performed on October 6, 1999 by Gang 6821

was consistent with those specified in Rule 8, Section I, paragraph (b) above. In addition, Article XI – Intra-Craft Work Jurisdiction, of the February 6, 1992 Imposed Agreement is an “incidental work rule” which furthermore allowed Gang 6821 to perform the disputed work on both dates, without penalty to the Carrier, given the following:

“Employees will be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing, provided the tasks are within the jurisdiction of the BMW. . . .”

The Carrier additionally maintains that notwithstanding certain procedural errors that require the Board’s dismissal of the claim regardless of the merits, the work claimed by Steel Erection Gang 6841 on both claim dates during a project that had been ongoing for more than two months was properly performed by Gang 6821 under the above incidental work Rule. Furthermore, with respect to the level of compensation requested by the Organization, based on certain Carrier records, namely the Gang 6821 Labor Distribution Report, the amount of time claimed in this case (more than 24 hours) is obviously excessive.

The Board carefully reviewed the entire record in this case, the contentions of the parties and the precedent Awards cited in support of their respective positions. Initially, we point out that we find no procedural errors justifying the Board’s dismissal of the case. For example, given the specific occurrence dates of October 6 and 18, the claim dated November 2, 1999 addressed to the Manager of Engineering Resources was timely submitted by the Vice General Chairman. Moreover, we find that the Organization’s misidentification of B&B Gang 6824 as 6823 was not prejudicial to the Carrier. Specifically, in the initial claim, the Vice General Chairman supplied the Foreman’s name of the gang it believed had done the work, and the Carrier never disputed that Foreman McCarthy’s Gang 6824, in fact, performed the work.

Thus, from our review of the record, the Board is convinced that throughout the parties’ on-property claim handling, the Carrier possessed the information it needed for its investigation of the claim and preparation of a detailed response, and so we rule.

Turning to the merits, as we held in Third Division Awards 25830 and 28597 involving these same parties, in this case we similarly find that, with respect to the steel work at issue here, Rules 4 and 8, quoted above, reserve the work associated with general steel erection and maintaining of steel bridges and structures to steel erection forces. However, the above-quoted language of Article XI, which "post-dated" the claims addressed in the above Awards, allowed the Carrier to assign to B&B Gang 6821 incidental tasks "directly related to the service being performed and which they are capable of performing, provided the tasks are within the jurisdiction of the BMW," we hold. The question before us is whether, as the Carrier contends, the work of fabricating steel shims/bridge shoes, and installing steel stringers was actually incidental. If it was, the work would have been within the ambit of Article XI – Intra-Craft Work Jurisdiction, of the Imposed Agreement, which reads in its entirety:

"ARTICLE XI – INTRA-CRAFT WORK JURISDICTION

Employees will be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing, provided the tasks are within the jurisdiction of the BMW. Compensation shall be at the applicable rate for the employee performing the service and shall not constitute a basis for any time claims by other employees. This provision is not intended to alter the establishment and manning of work forces accomplished in accordance with existing assignment, seniority, scope and classification rules. (Emphasis added.)

If it was not, the Organization's claim is meritorious.

The Board finds that, based on the facts and circumstances underlying the current claim, the Carrier did not violate the Agreement when it assigned Gang 6821 the incidental work of fabricating the steel shims/bridge shoes, on October 6, 1999, under Article XI. This is because we are convinced that the Organization simply did not offer any probative evidence to the contrary. Although the Organization asserted that there was no Welder on the site qualified to weld the steel shims, it offered no probative evidence in support of that assertion.

Again, Rule 8, Section I, paragraph (b) quoted above, plainly allows Group 3 B&B Welders to weld, burn and cut in connection with bridge construction or

repairs, we stress. Therefore, the Organization has not demonstrated that B&B Gang 6821's construction of steel shims/bridge shoes involved welding work that violated Rule 8, Section I of the Agreement, merely because of the fact that welding was done that day, we rule. At that point the proofs indicate that no additional forces were brought in. Under the circumstances particular to this case, including the small amount of steel welded, we find no violation for that work assignment.

However, the situation that occurred on October 18, 1999 is altogether different, the Board holds, based on our review of the complete record before us. On that date, the evidentiary record makes plain, the Carrier called B&B Carpenter Gang 6824, which was headquartered some 275 miles away at LaGrande, and five hours travel time from Portland, to assist B&B Gang 6821 with the installation of the steel stringers and shims. The facts of record coupled with the Agreement language in Rules 4 and 8 support the Organization's position that the work of installing the steel stringers and steel shims/bridge shoes should have been performed by the Claimants, as members of District Steel Erection Gang 6841, under Rule 8, Section IV – Steel Erection, first paragraph, and the underscored language contained in Article XI above. First, the Carrier's decision to transport Carpenter Gang 6824 from LaGrande to the bridge at MP 13.02 militates against its defense that, at 275 miles away, it was not practicable to move Gang 6841 to the site of the bridge work at issue, we conclude.

Second, unlike October 6, 1999, the work of installing steel stringers was not incidental to Carpenters' work and obviously could not have been accomplished by B&B Carpenter Gang 6821 alone.

Thus, the above-noted precedent is controlling. The work done on October 18, 1999 properly belonged to the Steel Erection Gang under Rule 8, Section IV, we find.

The Board therefore concludes that, in light of the foregoing, the Claimants are not entitled to any compensation on October 6, 1999. With respect to the October 18, 1999 claim date, the Board notes that each of the Claimants was on duty and paid ten hours at straight time. The record further indicates that on October 18, 1999 the parties dispute the number of employees used and the amount of time the gangs spent performing the claimed work of installing steel stringers and steel shims/bridge shoes. The Board therefore remands the claim to the parties to determine the correct number of hours to be paid solely for the work of installing

the steel stringers and shims on October 18, 1999. Such work shall be paid at the straight-time rate of pay. See Third Division Awards 30528 and 29531. The Board will retain jurisdiction over this claim while the parties calculate the appropriate number of hours to be paid each eligible Claimant.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of February 2005.