

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

E. L. McHaney, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of A. M. Harris, crane operator, that he be paid the difference between what he earned as shop laborer, 43½¢ per hour, and what he would have earned as a crane operator, 73¢ per hour, for all the time that a junior crane operator was used in operating a crane in connection with dismantling tracks on the Sopris Branch."

JOINT STATEMENT OF FACTS: "In July 1940 the Eagle crane was ordered into service by the proper officers of The Colorado and Southern Railway Company, and was placed in operation for the dismantling of the Sopris Branch. Operator George Burke was called for this service, and continued there until the work was completed.

"The respective seniority dates of the two employees involved are as follows:

Clamshell Operator	A. M. Harris	Dec. 16, 1918.
B. & B. Department	George Burke	Aug. 20, 1922."

POSITION OF EMPLOYEES: "The work of dismantling the Sopris Branch was performed by employees of the Carrier under the supervision of officers of the Carrier. As stated in the Joint Statement of Facts an Eagle Crane was placed in operation in connection with this dismantling work.

"We maintain that the work of dismantling this trackage was track work.

"We are attaching hereto as Employees' Exhibits 'A' and 'B' which are letters of understanding and agreement. Said letters provide that whenever the Eagle Crane, or any other crane, is used in the Track Department that it shall be manned and operated by a regular crane or clam shell operator; with the further provision that when the Eagle Crane is used in the B. & B. Department it shall be operated by an employee from the B. & B. Department.

"Therefore, it is very clear that under the application of the special agreement of understanding, aside from the schedule seniority provision, that when this Eagle Crane was assigned in the operation of track work it was obligatory upon the Carrier to assign as operator thereon the senior available crane or clam shell operator, who in the instant case was operator A. M. Harris. Instead of that, and as stated in the Statement of Facts, the Carrier assigned a B. & B. employee, George Burke.

"By assigning George Burke to the operation of the Eagle Crane, when used in the performance of track work, the Carrier violated not only the

"As previously stated, it is the carrier's contention that schedule agreements are not applicable on abandoned lines, and it is further our contention that your Board has no jurisdiction of this case for the reasons stated in the early part of this brief, and while we were not obligated to use any of our employes in dismantling this line, we elected to use some of our employes, and selected George Burke for this work for the reason that he was more familiar with the operation of this machine account the machine being generally assigned to the B. & B. Department and operated more frequently by him than by clamshell operators. We were not required to select either him or Mr. Harris by any schedule rule because such rules, as previously stated, are not applicable in this case. We, therefore, request that your Board decline this claim for lack of jurisdiction, and further because schedule agreements are not applicable on abandoned lines."

OPINION OF BOARD: The facts are not in dispute. The Carrier, with the permission of Interstate Commerce Commission, abandoned its Sopris Branch line. It used its own employes in dismantling the track and in salvaging the material.

It is the Carrier's contention that when this line was abandoned and notice given to the employes, it ceased to be an instrumentality of commerce and was thereafter not subject to the Railway Labor Act, nor to the Wage Schedule between it and its employes.

Two awards of the First Division, among others are cited to support the contention, Nos. 1526 and 5588, in both of which the dismantling work was handled as here. In the former, no train and enginemen were used. Had the Carrier elected to use train and enginemen, the senior men available would have been entitled to the work. In the latter, it was not a question of applying rules, but was whether the rules apply as there was no engineer used.

It is the opinion of this Referee that the Carrier is obligated to apply the rules of the Agreement to any work where it elects to use its own employes, even on abandoned lines, as they are still employes in the service of the Carrier and the Agreement covering their employment is with the Carrier and not with any particular part of it except as they may be limited by seniority districts.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 Carrier is obligated to apply the rules of the Agreement to any work where it elects to use its own employes.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of August, 1941.