

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Henri A. Burque, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the employees named below, trackmen, be paid Bridge and Building Mechanic's rate of \$.635 per hour while they were engaged in handling and placing of concrete slabs in highway crossing at Vermont Street, Blue Island, Illinois, September 1940, as follows:

Name	Days	Hours	Amt. Due
Daniel Florez	6	48	\$9.84
Manuel Alvarado	6	48	9.84
Jose Ramirez	5	40	8.20
Felix Rosas	5	40	8.20
Louis Lopez	5	40	8.20
Hilario Rodriquez	5	40	8.20
Gregorio Gonzales	4	32	6.56

EMPLOYES' STATEMENT OF FACTS: Commencing Monday, September 9, 1940, Roadmaster Wolf and section men renewed highway crossing at Vermont Street, Blue Island, Illinois, by setting of concrete slabs which had been purchased by the Carrier pre-cast.

It is agreed by the Carrier that certain of these pre-cast concrete slabs were laid on this same crossing by Bridge and Building Department employees.

Concrete slabs installed at 119th Street Suburban Line, Crawford Avenue and 167th Street, 102nd east of Torrence Avenue, and at 95th Street, 103rd Street and 111th Street, were installed by Bridge and Building employees under the supervision of Bridge and Building Department foremen.

Rule 1, Scope, provides in part:

"BRIDGE AND BUILDING MAINTENANCE

"Employees in this department include those used in the construction and maintenance of all structures required for the operation of the railway, and all concrete work, construction of walks, platforms, crossing gates, scaffolding, etc., except signals, telegraph and telephone lines." (Underscoring ours.)

POSITION OF EMPLOYES: The scope rule, No. 1, Bridge and Building Maintenance, very definitely assigns all concrete work, construction of walks, platforms, etc., to Bridge and Building Department employees. While on the other hand no mention is made in any part of the rule under the heading of "Track Maintenance" that the handling of concrete, either as to the making of concrete or the handling and placing of a finished product of concrete, such as concrete slabs, may be done by trackmen.

laborers were performing concrete work in laying these pre-fabricated slabs on the ties. Section laborers have in the past laid pre-fabricated steel and other types of manufactured material on street and highway crossings without claims being made for a higher rate of pay. They perform right of way fence work and it might as well be contended that if the Carrier purchased precast fence posts made of concrete instead of wooden posts that the work of inserting fence posts in the ground became B. & B. work because the fence posts were manufactured of concrete. It is absurd to say that the mere handling of an article made of concrete is concrete work.

We have shown that the work performed in the instant case was jointly performed by the section laborers under the supervision of the section foreman and the B. & B. gang under the supervision of the B. & B. Foreman, the section laborers performing their part of the work in laying the slabs in place on the ties and driving certain track spikes, and the B. & B. employees, cutting and fitting the flange-way blocks, boring holes and applying lag screws to hold slabs outside of the rail on ends of ties which is work the B. & B. employees are fitted to do and have the tools to perform.

Section Foremen report to the Roadmaster and as shown in Group 6, page 11 of the current agreement with the employees, they have charge of the construction or maintenance of railroad track of any character and the rules of this Carrier provide that roadmasters shall cooperate with Bridge and Building men in connection with all work that may be done by them which affects the maintenance of track. The installation of the slabs, cutting and fitting flange-way blocks, etc. did affect the maintenance of track and the very nature of the work called for joint participation in the performance of that work by the Section Foreman and his gang of section men and the B. & B. Foreman and his gang, each class of employees performing their respective part of the work as herein shown.

The same kind of crossing work was performed jointly by B. & B. employees and section laborers at the other crossings on the Chicago Division shown in Carrier's statement of facts, i. e., Oak Park Avenue, Central Avenue and 139th Street and our records show that this type of work was similarly performed in 1931 at 119th Street crossing and in 1937 at 95th, 103rd and 111th Street crossings without any claim or contention on part of the employees that section laborers were performing concrete work.

The Carrier holds that the instant claim is not sustained by any agreement rules and should be denied by your Board.

OPINION OF BOARD: The facts are not in dispute. They are stated succinctly in the Committee's *exparte* submission.

The question presented is whether the setting of concrete slabs, manufactured by and purchased of an outsider, by trackmen, constituted a violation of Rule 1, Scope, which provides in part:

"BRIDGE AND BUILDING MAINTENANCE—Employees in this department include those used in the construction and maintenance of all structures required for the operation of the railway, and all concrete work, construction of walks, platforms, crossing gates, scaffolding, etc., except signals, telegraph and telephone lines."

The employees contend that the laying of concrete slabs, even though purchased pre-cast, is bridge and building maintenance work and belongs exclusively to B. & B. mechanics and their helpers. The Carrier denies this contention.

In order to sustain the employees' contention, we would have to say that setting pre-cast concrete slabs between rails at a railroad highway crossing would come under the construction of walks or platforms, or both. We do not see how we can possibly define a railroad highway crossing as a walk or platform. Nothing can be found in the definition of walks or platforms that approximates the definition of a railroad highway crossing. True it is

that pedestrians may have to walk over a crossing to reach a railroad platform at a railroad station or a walk leading to the station, but that does not alter the situation.

It must be conceded that the laying of these pre-cast concrete slabs is not concrete work in the sense in which cement work must be understood. The work of laying the cement and making the slabs was performed by the manufacturer from whom they were purchased.

Now did laying of cement require skilled or unskilled work of an artisan or craftsman character, such as is possessed by carpenters, or necessitate use of carpenter's tools? There is nothing in the record to prove it did. The work was purely manual labor, requiring the slabs to be laid over a foundation and over the ties, between rails, in contact with each other, with setting of spikes against the end slabs to prevent shifting or movement. There is no evidence in the record that mechanics' tools were required.

It being impossible to say definitely that the work was the prerogative of the B. & B. Maintenance Organization, exclusively theirs as a matter of right, the claim must fail, even though we should find, as contended by the Committee, that similar work has been done in some instances by B. & B. maintenance men. We are not informed, nor can we find that similar work has always been done by B. & B. maintenance men, and that this was the first instance when a situation like the present one arose. In fact, it appears that work of this kind has been handled before as it was in this case. Disagreement as to how the work has been done in the past is admitted.

"From the foregoing, it is obvious that this Board is in no position to say with that degree of certainty which should back its awards, that the work here involved is the exclusive prerogative of either organization. It may be that it is competent for either to perform it, but there is quite insufficient basis to reach a conclusion that it might be done by one to the exclusion of the other." Award 616, Referee Swacker.

Rule 37, Composite Service, does not apply here, even though B. & B. mechanics and their helpers were doing the work of cutting and fitting in place of flangeway blocks (presumably of wood), and the boring of lag screw holes in ties, together with the setting of lag screws, as required, with the slabs placed outside of rails at the time the concrete slabs were being placed on the highway crossing..

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 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 no violation of the rules has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1943.