

Award No. 3436

Docket No. MW-3291

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI PACIFIC LINES

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that W. B. Starnes, Bridge Inspector, shall be paid the difference between what he received and that which he should have received under the application of Schedule Rules 24 and 14 (f-1) for services rendered on May 18, 19, and 20, 1945, as follows:

May 18— 8:00 A. M. to 5:00 P. M.— 8 hours pro rata rate
" — 5:00 P. M. to 12:00 P. M.— 7 hours time and one-half rate
May 19—12:01 A. M. to 1:00 A. M.— 1 hour time and one-half rate
" — 1:00 A. M. to 8:00 A. M.— 7 hours double time
" — 8:00 A. M. to 12:00 P. M.—16 hours time and one-half rate
May 20—12:01 A. M. to 2:30 A. M.—2½ hours double time.

EMPLOYEES' STATEMENT OF FACTS: The claimant, W. B. Starnes, is regularly assigned as a bridge inspector on the Kingsville Division, Missouri Pacific Lines, with headquarters at Kingsville, Texas. His duties are to make regular inspection of bridges and buildings on that division.

On May 18, 1945 Bridge 216.8 near Bloomington, Kingsville Division, was almost totally destroyed by fire. This necessitated assembling of several bridge and building gangs and several track gangs to reconstruct the bridge. About 4:30 P. M. May 18th, W. B. Starnes received instructions from the Division Engineer to proceed to the burned out bridge to render supervisory service in connection with its reconstruction. After reaching the bridge shortly after receiving said instructions, Starnes worked continuously until 2:30 A. M. May 20th.

Agreement effective August 1, 1938 between the Carrier and the Brotherhood is hereby made a part of this Statement of Facts.

POSITION OF EMPLOYEES: We submit, as Employes' Exhibit "A", copy of letter addressed to General Chairman H. B. Oholendt by H. E. Roll, Chief Personnel Officer, declining the claim.

As will be observed, in his letter Mr. Roll states in part: "Bridge Inspectors are not mentioned in the Scope Rule of the Agreement with your Organization. The only place in the Agreement wherein they are referred to is in the wage scale." Continuing his letter, Mr. Roll explains the consummation of a Memorandum of Agreement dated December 27, 1940, wherein it was agreed that the seniority status of bridge inspectors would be the same as that of B&B foremen, and then in the next to last paragraph of the letter states in part: "This agreement had the effect of placing Bridge In-

ment between the Carrier and the Brotherhood of Maintenance of Way Employees;

(b) This fact has been recognized by the parties through the years as evidenced by the negotiation of the Memorandum Agreement which became effective December 27, 1940;

(c) The contention and claim of the Employees is without basis under any existing agreement between the Carrier and the Brotherhood of Maintenance of Way Employees and, accordingly, the contention of the Employees should be dismissed and the claim declined.

OPINION OF BOARD: The question presented here is whether or not a Bridge Inspector is within the provisions of the Agreement between the Organization and the Carrier so as to entitle him to the benefits of Rules 24 and 14 (f-1).

The position of Bridge Inspector was an established and recognized one on this carrier for many years prior to the effective date of the Agreement. It is a responsible position of a supervisory nature.

The first question presented is this: Is the position within Rule 1 (the "Scope" rule), which is:

"These rules govern the hours of service and working conditions of all employees herein named * * * (not including supervisory forces above the rank of foremen) * * *."

A Bridge Inspector is not named therein, although many other positions are named. We think this omission an important circumstance. It seems reasonable to say that had the intention been to include Bridge Inspectors within the scope of the Agreement, they would have been named along with the other and many lesser positions.

The Scope Rule, after setting out named positions, says:

"All other employees performing work properly recognized as belonging to and coming under the jurisdiction of the Maintenance of Way Department."

Was it intended to include the important position of Bridge Inspector in this catch-all provision? We think it obvious that it was not. Too many lesser-valued jobs are listed by name to justify that conclusion.

Both parties stress the "not including supervisory forces above the rank of foremen" clause. The Carrier says the Bridge Inspector job is above the rank of foreman, hence not included. The Organization says it is equal to the rank of foreman, hence not excluded. Even if equal, a Bridge Inspector still would not be within the scope rule for that reason, for he is not a foreman.

We think it important to point out that the agreement of December 27, 1940, is a seniority rule, and that had the parties thought that Bridge Inspectors were within the agreement, then Rule 2 would have taken care of their seniority problems. We think it important to point out also that Rule 23 is a "supervisory employees" rule and it does not mention Bridge Inspectors. Had it been the thought of the parties that Bridge Inspectors were within the agreement, then it hardly seems reasonable that the parties would have considered a special agreement necessary.

There is the listing of "Bridge Inspectors" in the wage scale. That fact alone is not sufficient to bring men of that class within the agreement. The coverage of the Scope Rule is the important thing. The inclusion in the wage scale without more is not sufficient to bring them within the agreement.

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 the Bridge Inspector involved in this claim is not within the scope of the agreement so as to give him the benefit of the rules upon which the claim is based.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1947.