

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY

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

- (1) That the Carrier erred when it assigned Section Foreman Unnopulos and Section Laborers J. M. Anders, C. W. Collins, and V. H. Ward to perform work usually and regularly performed by B&B forces and did not allow them pay at the rates applicable to the employees who regularly perform this work;
- (2) That Section Foreman Unnopulos be allowed the difference in pay between what he did receive at the section foreman's rate and what he should have received at the B&B foremen's rate for eight (8) hours December 16, 1946, nine (9) hours December 17, 1946, eight (8) hours December 18, 1946, and eight (8) hours December 24, 1946;
- (3) That Section Laborer J. M. Anders be allowed the difference in pay between what he did receive at the section laborer's rate of pay and what he should have received at the B&B helper's rate of pay for eight (8) hours December 16, 1946, nine (9) hours December 17, 1946, eight (8) hours December 18, 1946 and eight (8) hours December 24, 1946;
- (4) That Section Laborer C. W. Collins be allowed the difference in pay between what he did receive at the section laborer's rate of pay and what he should have received at the B&B helper's rate of pay for eight (8) hours December 16, 1946 and eight (8) hours December 18, 1946;
- (5) That Section Laborer V. H. Ward be allowed the difference in pay between what he did receive at the section laborer's rate of pay and what he should have received at the B&B helper's rate of pay for eight (8) hours December 18, 1946.

EMPLOYEES' STATEMENT OF FACTS: On December 9, 1946, Roadmaster Hall instructed Section Foreman Unnopulos to remove drift and debris from under Bridges FF-962 and FF-962½. On December 16, 1946, Section Foreman Unnopulos and Section Laborers C. W. Collins and J. M. Anders worked eight hours during their regular assigned tour of duty removing drift and debris from under Bridge FF-962½. On December 17, 1946, Section Foreman Unnopulos and Section Laborer Anders worked eight hours during their regular assigned tour of duty and one hour overtime removing drift and debris from under Bridge FF-962½. On December 18, 1946, Section Foreman Unnopulos and Section Laborers C. W. Collins, J. M. Anders and V. H. Ward worked eight hours during their regular assigned tour of

and carrying blocks and cross ties, which was part of the wrecking equipment, from the material car to members of the wrecking crew to block up the outrigger of the derrick. A rule, more or less similar to Rule 32 quoted above, was relied upon. In denying the claim the Division in its Opinion held in part:

" . . . At least some of the work described has been performed in the past by section forces along with their other duties, including repairing tracks at derailments. . . ."

In **Third Division Award No. 615**, (C. L. vs. Southern Pacific (Pac.)—Referee Swacker), the Clerks' Organization claimed time on the contention that telegraphers were performing clerks' work. The claim was denied, thus recognizing clerks and telegraphers do much work in common.

In **Third Division Award No. 1397**, (T. E. vs. L. & N.—Referee Stone) past practice was involved. In denying the claim, in the Opinion of the Board, it was said:

" . . . The practice complained of is one of long standing. During its continuance there have been revisions of the contract, without correction, if correction be needed, of this practice. That is persuasive that, for eleven years or more, the employes themselves have not regarded it as a violation of their contract . . ."

Rule 32 (quoted above) of the current agreement, effective November 1, 1940, was listed as Rule 4-(v) in the prior agreement effective October 1, 1926. If the practice now complained of was in conflict with the rule the employes have had ample opportunity for correction if they had deemed correction to be necessary. Such long acquiescence clearly shows the employes understood the practice now complained of to be proper.

A rule of reason must be applied to difficult and perplexing situations. The rules must be applied consistently with their spirit and manifest purpose, and not in such manner as to interfere with the operation of the railroad. A reasonable application of the rules permits the use of section forces to clear drift and debris from bridges as was done on the dates for which claims are made, and there is no rule, agreement or practice requiring the additional payment as claimed.

The carrier holds that the many years of practice on this railroad, the rules involved, and the awards referred to support its position that this claim is without merit and should be denied.

(Exhibits not Reproduced.)

OPINION OF BOARD: On December 9, 1946, Section Foreman Unnopulos was directed to remove drift and debris from under certain specified bridges. On the days stated, the Foreman and Section Laborers named performed this work. Claimants contend they are entitled to be paid Bridge and Building rates of pay of corresponding positions for the reason that they performed Bridge and Building work.

The Carrier provided claimants with pike poles, rope, peavie hooks and timbers, working tools and facilities not ordinarily used by section employes, in order that they could properly do the work. On one bridge, planks were placed from bent to bent on the sash braces from which claimants worked. With pike poles and peavie hooks, the drift and debris was pulled loose so it would float away. A few saplings and logs were cut with a cross-cut saw or an axe. On another bridge, they cut up saplings, small trees and logs with a cross-cut saw so that the next high water would float them away. Most of this done from the ground. It is this work that claimants contend was Bridge and Building work and for which they claim pay at the Bridge and Building rates.

Bridge and Building work consists of the construction, repairing, maintaining or dismantling of bridges. Whether certain types of work belong to Bridge and Building employes or some other craft, is dependent upon the

purpose sought to be accomplished by it. If its purpose is to maintain a bridge by removing a hazard to its safe use, it is Bridge and Building work. If its purpose is to protect track and other facilities maintained by section employees, the work would belong to them. Under the evidence produced in this record, we think the purpose of the work was the maintenance and safety of the bridges. This makes it Bridge and Building work. This being true, claimants are entitled to pay under Bridge and Building rates as provided by Rule 32, current Agreement. The applicable portion of the rule is:

"An employee required to fill the position of another employee receiving a higher rate of pay, shall be paid the rate of such position for the work day when the time so engaged is in excess of four (4) hours."

There is persuasive evidence in the record that section men have performed the type of work here involved as a part of their work in the past. Such proof may constitute an effective bar to retroactive reparations but it cannot change the express provisions of 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 has jurisdiction over the dispute involved herein; and

The Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.