

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John M. Carmody, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: (1) That the installation of number plates on telegraph poles along the right of way is work properly coming under the classification of Bridge and Building and Structural Work;

(2) That Carpenter Floyd P. Howard and Carpenter Helper Woodrow Fitzpatrick be allowed ninety-six (96) hours, or twelve (12) days at their respective rates because of the Carrier assigning Track Forces to perform B&B work during the month of July, 1947.

JOINT STATEMENT OF FACTS: During the month of July, 1947, telegraph pole number plates of rubberoid roofing material, which had previously had the pole numbers stenciled on them at a centralized point, were distributed to the various sections on the Toledo Division and were nailed on the poles by the track gangs on each section. Before this method of marking poles was adopted, the pole numbers had been painted on the poles by B&B carpenters. During the month of July, 1947, Floyd P. Howard worked from July 1 to July 9, inclusive, as acting carpenter foreman at Sidney, Ohio, and from July 10 to July 31, 1947, inclusive, as leading carpenter at Sidney and Troy, Ohio. He was paid full time except on Sundays and holidays and on July 11, being absent for personal reasons on that date. Mr. Woodrow Fitzpatrick worked the entire month of July as carpenter helper at Sidney and Troy, Ohio. He was paid full time except on Sundays and holidays. Had Messrs. Howard and Fitzpatrick been used to apply the telegraph pole number plates over the entire division, it is estimated that they would have consumed 12 days or 96 hours to complete this work.

POSITION OF EMPLOYES: During the month of July, 1947, new number plates, with the pole numbers stenciled on them, were sent to the section gangs on the Toledo Division, with instructions for them to nail them on the telegraph poles.

The placing of these number plates on the poles required the use of hammer and nails and, in some instances, the use of a ladder. There were certain specifications as to how they would be placed on the poles, such as a certain angle to the track and distance from the ground.

The former method of numbering these poles was by first painting the pole black where the numbers were to be placed, and then stenciling the number in with a brush and white paint. This work previously was always performed by the Bridge and Building men.

As this new system is just a substitute for the old method of doing the work, we contend it is Bridge and Building work and, when done by other

The record shows that the wage claim in this particular dispute was denied in its entirety.

In view of the above cited Awards of this Division it follows logically that a definite principle has been set forth envisaging that in the absence of a supporting working rule this Division lacks proper authority to arbitrarily draw a concrete line of demarcation between work performed by one class of employees within the scope of one working agreement and another class of employees within the comprehension of that same working agreement. That is to say, the Division is without authority to set forth a definite proposition defining duties where there is no rule specifically classifying such duties or where there is a substantial blending and merging of these particular duties.

In view of the basic facts in this case and in view of the above the Carrier submits that the Awards of this Division do not support this claim.

In view of the above and in view of all that is contained herein the Carriers respectfully requests the Division to hold this claim as being one without merit and to deny it accordingly.

OPINION OF THE BOARD: This is not a jurisdictional dispute in the sense that separate organizations are involved; it is rather a question of which of two groups within the same organization covered by the same agreement is entitled to attach rubberoid number plates to telegraph poles along the right of way. The facts are not in dispute. Until July 1947 Bridge and Building employes painted a black spot on poles, at specified intervals, and then, by use of stencils, painted the numbers in white.

The method was changed. Instead of painting the numbers on the poles as described, pole numbers are stenciled and painted on rubberoid plates at a central point, from lists furnished by the Master Carpenter. These plates are then distributed in lots to track forces who nail them to designated poles. The position of the numbers, distance from ground, etc., is specified.

Claimants maintain that in spite of the change in method, which they do not protest, the whole operation still belongs to them just as it did before the change, namely the preparation of the plates and putting them in place on the poles. The Carrier maintains that the skilled part of the operation, cutting the stencils and painting the numbers on the plates, has been retained by the B&B employes; that nailing the plates to the poles is a simple operation that does not require "the skilled use of tools customarily used in such work as carpentry, painting . . ." This quotation is from Rule 67 which describes work of both branches of Maintenance of Way forces, Bridge and Building and Structural work (sub-section (a)) and Roadway and Track work (sub-section (b)).

Nowhere in Rule 67 (a) or (b) do we find any mention of signs of any sort whether for pole numbering or for any other purpose. It has been argued for the Carrier that track forces customarily nail up or tack up a variety of signs along the right of way. No claim is made, however, that track forces ever had any connection with pole numbering before the method was changed. As a matter of practice and custom that work appears to have been done exclusively by B&B employes.

In addition to its contention that this work belongs to B&B employes because they always did all of it under the old method, the Organization maintains that "These pole numbers are put to the same use as our Mile Post numbers and are used for the purpose of measuring the distance between mile posts. Mile Posts are Roadway Signs. * * * The maintenance of Roadway Signs is accepted as being B&B work; . . ." This is not disputed in the record.

The Carrier leans heavily on the fact that the actual nailing of the number plates to the poles does not require "the skilled use of tools customarily used in such work as carpentry, etc." This is not refuted by the Organization. It is obvious. Every skill is made up of many components some of which are difficult to acquire and to execute (impossible for some

persons ever to be completely proficient in them) and some of which are so simple as to be easily acquired and executed. Few craftsmen ever are required to utilize their highest skill or the most difficult components of these skills continuously. The fact that nailing these rubberoid number plates to telegraph poles is simpler work than many other classes of work that B&B employees are called upon to do seems to be too obvious to warrant discussion even when it is done to specifications with respect to placement on the pole, distance from ground, etc.

In behalf of the Carrier were cited Awards No. 616, in which the dispute with respect to use of teletype equipment was remanded to the parties, No. 1656, involving signalmen and track forces, No. 2414, involving the rule we are dealing with here, No. 2932, replacing electric light bulbs, No. 2548, painting and installation of signs and No. 3130, whitewashing vs. painting.

In behalf of the Organization were cited Awards Nos. 3638, 4077 and 4553, all of which rest on "the reason or primary purpose" for doing the work. It also cites Award 4609. There it was said "Despite the simplicity of operation of this tool, since it does make a weld the welders would have a right to claim the work in the absence of the establishment of a new position to operate it or agreement upon assigning it to other mechanical classifications."

Does this Board have any more right to divide the instant operation between the employees (B&B) who did it exclusively under the old method and those of another group (track forces) covered by the same rule, than it has to continue it under the former accepted jurisdiction? We think there is less danger of "extending or expanding the agreement" if we leave the jurisdiction where it was. Reclassification by decree rather than by negotiation on the property has inherent dangers that this Board ought to be slow to encourage.

The operation here was split into two parts and one part assigned to others without agreement. We conclude here, in spite of the apparent inconsistencies in the awards cited by both parties, that neither the agreement nor past practice under it warrants our approving such other assignment.

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 there is no warrant in the Agreement for assigning the work in question to others than the group that previously had put the numbers on the poles.

AWARD

Claim (1) sustained. Claim (2) sustained to the extent that actual records verify the hours.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of November, 1949.