

Award No. 4879
Docket No. MW-4917

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
NORTHERN PACIFIC RAILWAY COMPANY**

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

(1) That the Carrier improperly assigned to employes not covered by the scope of the effective agreement between the Northern Pacific Railway Company and the Brotherhood of Maintenance of Way Employes the work of making pre-cast concrete crossing planks at South Tacoma;

(2) That the Carrier discontinue this present practice and assign the making of this pre-cast material referred to the B&B Department employes covered by the scope of the effective agreement.

EMPLOYEES' STATEMENT OF FACTS: On or about November 15, 1948 the Carrier commenced production of concrete crossing planks or slabs at an outdoor shop set up at South Tacoma. At this location the Carrier built a concrete floor upon the ground, 16'x284', width and length and about 4" thick and then another concrete strip 27'x70', width and length and 4" thick. These concrete strips served as the floor to this outdoor so-called shop. A couple of old refrigerator cars were removed from their railway trucks and placed upon the ground to serve as storage houses for the cement. An old passenger coach was also placed on the ground to serve as a headquarters for the men engaged in this work. Pieces of canvas were erected, tent fashion, to protect the concrete moulds from the weather.

At the time this instant dispute arose the Carrier had commenced the making of two types of concrete slabs to be used in the place of crossing planks at the Carrier's grade crossing. One type of slab is 16 inches wide, eight feet long and four inches thick; the other type is sixteen inches wide, four feet long and four inches thick. In the performance of this work the Carrier had for equipment a concrete mixer and vibrator, a crane mounted on a truck carriage, rubber tired, as well as the necessary raw materials, such as sand, gravel, cement and reinforcement iron.

At the time this claim arose the Carrier had for a working force one cement finisher who was Foreman of the crew at \$1.34 per hour, one skilled mechanic at the rate of \$1.13 per hour, three unskilled employes at the rate of \$1.01 per hour, and one chauffeur (operator of the truck type crane) at \$1.14 per hour.

The Carrier assigned the performance of this work to employes in the Reclamation Plant and Store Department at South Tacoma.

ployees covered by the Clerks' Agreement to operate the concrete manufacturing plant established in the Store Department at South Tacoma. The following excerpt from Mr. McCauley's letter of March 19, 1949, to Mr. Keyes (Carrier's Exhibit "F") epitomizes the facts concerning the source of supply of concrete plank for system-wide distribution:

"The foregoing facts show that at no time have B&B Department employees manufactured concrete products for system distribution; that prior to the establishment of the concrete manufacturing plant at South Tacoma, concrete products have either been manufactured by contractors or have been purchased from manufacturers. These facts also show that prior to the establishment of the concrete manufacturing plant at South Tacoma no class of employees have established the exclusive right to operate a concrete manufacturing plant. Under these circumstances, the assignment of the concrete manufacturing plant is a managerial prerogative."

The Carrier has shown:

1. That prior to 1948 concrete crossing plank were manufactured by contractors or were purchased from manufacturers.
2. That at no time have B&B Department employees manufactured concrete plank for system-wide distribution.
3. That the class of employees installing concrete crossing plank is not a deciding factor in determining the class of employees to be assigned to operate a concrete manufacturing plant.
4. That prior to 1948 no class of employees have by agreement or practice established the right to operate a concrete manufacturing plant.
5. That there is no basis under schedule rules for a claim that B&B Department employees should be assigned to operate the concrete manufacturing plant established in the Store Department at South Tacoma.

The claim should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The System Committee of the Brotherhood contends that the Carrier violated the Agreement in assigning to employees, not covered by the Agreement, the work of making pre-cast concrete crossing planks. Prior to November 1948, the Carrier procured standard pre-cast concrete crossing planks from either manufacturers or contractors. The record shows that from these sources the Carrier purchased 11,637 pieces during the period 1944 to 1948, inclusive.

In November 1948, the Carrier established a concrete manufacturing plant in the Store Department at South Tacoma, which was operated by employees covered under the Clerks' Organization. The plant is equipped to make standard pre-cast concrete plank for system-wide distribution. While it is true that members of the Maintenance of Way Organization did make pre-cast concrete plank, the evidence is that only 195 of these plank were made over a period of several years and that the plank was of off-standard sizes for local use rather than system-wide distribution.

It is not disputed that these planks are installed by the Maintenance of Way employees and that if the work of making the planks was done out in the field, it would be performed by Maintenance of Way employees.

The Board finds that Award No. 4512 is controlling. In that case, employees other than members of the Maintenance of Way Organization made a screen door and glass top panel door in the Mill Room. Prior to the time the Mill Room was equipped with necessary machines to do the work, the Carrier purchased doors and windows on the open market. The Maintenance

of Way Organization, as in the present case, did not question the Carrier's right to purchase these items. Award No. 4512 states:

"This Scope Rule of the Agreement embraces all work on the Carrier's property of the kind and class which employees of the named positions included therein usually and customarily performed at the time of the negotiation and execution thereof. It included the work of repairing and maintaining the buildings.

"While B&B employees have always fitted and installed doors and windows, when needed in connection with the repair and maintenance of Carrier's buildings, it appears that prior to the mill room being equipped for the construction thereof the Carrier usually and customarily purchased prefabricated doors and windows in the open market and delivered them to the B&B employees in that condition for the purpose of fitting and installing. No objection is made to that practice. After the installation of the equipment in the mill the fabrication or construction thereof was usually performed therein on orders from the Store Department. In either event the Scope of the Brotherhood's Agreement does not extend to the fabrication thereof but only to the fitting and installation, after they are delivered for that purpose. See Award 2548 of this Division. We do not find any violation of the Agreement by the Carrier."

Award No. 4491, cited by the Organization, is distinguished on the ground that in that case the work performed by employees not under the Agreement consisted of the following:

"construction, erection, and painting of five first aid buildings, which were located and placed on foundations."

In this case the crossing planks are installed by the B&B Department employees and the Carrier states that concrete crossing installations "to meet peculiar crossing arrangements will not be eliminated by any production of standard concrete crossing plank * * *."

It is noted also that the Carrier manufactures ties, using employees covered by an Agreement with the Clerks' Organization but these ties are installed by Track Department employees.

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 Agreement was not violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of June, 1950.