

Award No. 5749  
Docket No. MW-5709

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Adolph E. Wenke, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
THE BALTIMORE AND OHIO RAILROAD COMPANY**

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

(1) That the Carrier violated the agreement when they assigned Trackmen to unload Bridge and Building material at Lima, Ohio while Bridge and Building Department employees were furloughed.

(2) That Bridge and Building Carpenters Emmett A. Clark, William F. Harmon, Donald Ellerbrock and Norbert Ellerbrock be paid at their straight time rate of pay for twenty-four (24) hours each because of this improper assignment.

**JOINT STATEMENT OF FACTS:** On October 5, 1949, a car of bridge timbers was unloaded by trackmen at Lima, Ohio, no B&B forces being at the site where the material was to be used. Prior to this date the claimants had been furloughed from the B&B forces on the Toledo Division.

This dispute has been handled in accordance with the provisions of the Railway Labor Act, as amended. No agreement on a settlement thereof having been reached between the parties, it is hereby submitted to the National Railroad Adjustment Board for decision.

**POSITION OF EMPLOYES:** The pertinent portion of the Scope Rule as contained in the effective agreement reads as follows:

"These rules govern the hours of service and working conditions of all employees in the Maintenance of Way and Structures Department, including pumpers, highway crossing watchmen, signalmen at railway (non-interlocked) crossings, and lampmen, except the following:"

Rule 67(a) and (b) of the effective agreement read as follows:

"(a) Bridge, Building and Structural Work—Work requiring the skilled use of tools customarily used in such work as carpentry, painting and glazing, tinning and roofing, plastering, bricklaying, paving, masonry, concreting, construction and maintenance of coal-ing stations, bridge construction and repairs, steel bridge and scale erecting and repairing, and such other work as is required in the construction and maintenance of railroad structures.

this Division, together with Referee Edward F. Carter, held in part as follows:

"The material being moved was being distributed between Signal Maintainers' stations. It was not being hauled insofar as the record shows in connection with its actual use in signal construction or maintenance work. Under the previous awards of this Division, the work in question was not the exclusive work of Signalmen. Until it becomes an integral part of a signal construction or maintenance job, the signalmen have no exclusive right to its handling. Consequently, work in connection with the moving of materials to be used by signalmen at some future time is not exclusively signalmen's work. But work in connection with the movement of such materials from a warehouse or material yard to a signal construction or maintenance job for immediate use on such job, is the exclusive work of signalmen. Awards 3826, 3689, 4797, 4978."

The claim in this dispute was denied.

In support of the Carrier's contention in this case relative to the validity of the past practice and custom as supporting the Carrier's position, the Carrier directs the Division's attention to Award No. 4638 involving a dispute between the Brotherhood of Maintenance of Way Employees and The Baltimore and Ohio Railroad Company. This Division, together with Referee John M. Carmody, held in part as follows:

"To paraphrase what we have said in Award No. 4637 in support of the Organization's claim there, we believe we will be less likely to 'extend or expand' the present agreement and less likely to interfere with rational negotiation of the issue on the property if we deny this claim than if we allow it.

"We find support for our denial of the exclusive right to the replacement of the inner guard rail on Bridge 16 to B&B employees in Awards Nos. 1078, 1134 and 4160. Here as in Award 4160, we **emphasize that our finding is based on custom and practice and is confined to the facts as presented in this case.**" (Emphasis added).

The claims in this dispute were denied.

All data submitted in support of the Carrier's position in this dispute has been presented to the other party and is made a part of the particular question in dispute.

Based on the above, the Carrier respectfully requests this Division to find this claim as being without merit and to deny it accordingly.

**OPINION OF BOARD:** The System Committee contends Carrier violated its Agreement with the Brotherhood when it had Trackmen unload Bridge and Building material at Lima, Ohio. It asks that each of four named furloughed Bridge and Building carpenters be paid twenty-four hours at straight time because thereof.

The parties agree that on October 5, 1949 a car of bridge timbers was unloaded by trackmen at Lima, Ohio, at the site where the material was to be used.

It is agreed that no Bridge and Building forces were on duty at Lima at the time as they had, prior thereto, been furloughed. We do not think that fact material if the work performed actually belonged to Bridge and Building employees.

Carrier contends the work comes within the following language of Rule 67 (b) of the parties' effective Agreement: "\* \* \*, unloading and handling all

kinds of material \* \* \*." Whether or not, as the Committee contends, this language refers to material used in roadway and track work as described in Rule 67 (b) or, as Carrier contends, it is general in its character is not here material if the work done can be said to fall within the following specific language of Rule 67 (a): \* \* \*, and such other work as is required in the construction and maintenance of railroad structures". "Structures" meaning bridges, buildings and other construction referred to therein.

Determination of the class to which work belongs rests on the purpose for which it is performed. We do not think the unloading of bridge timbers and the stockpiling thereof for future use comes within the meaning of this language. Here the bridge timbers were unloaded at the site where they were to be used in connection with bridge work. Work done in connection with the unloading thereof was for the purpose of stockpiling the timbers on the site so they would be available when needed. It was not being done, so far as the record shows, in connection with its immediate actual use in bridge construction or maintenance. Until the timbers become an integral part of a bridge construction or maintenance job its handling does not come within the meaning of the language quoted: See Award 5046 of this Division.

For the reasons above stated the claim must be denied.

**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 Carrier has not violated the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 1st day of May, 1952.