

Award No. 5869
Docket No. MW-5746

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

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

(1) The Carrier violated the effective agreement on or about April 13, and 14, 1950, when they assigned Section forces on the South Texas district to unload, assemble and install highway crossing signs and compensated the employes so assigned at the Section Laborer's rate of pay in lieu of the Bridge and Building Helper's rate of pay;

(2) The Section forces assigned to perform the work referred to in part (1) of this claim, be paid the difference between what they did receive at the Section Laborer's rate of pay and what they should have received at the Bridge and Building Helper's rate of pay.

EMPLOYES' STATEMENT OF FACTS: On or about April 13, and 14, 1950, and on subsequent days thereto, section forces on the South Texas District and specifically at Bastrop, Texas, have been assigned to unload, assemble and install declamatory signs such as highway crossing signs and de-rail signs.

In performing the above referred to duties, the section crews unload the signs from the cars and in instances where it is necessary to assemble certain types of signs such as highway crossing signs, the track forces perform this function. They are then required to install the signs by digging and backfilling the holes in which the posts are placed.

The Employes have contended that all of the above referred to duties are comprehended in the assignment of Bridge and Building Department employes.

The Carrier has contended that these duties are comprehended in the assignment of section laborers.

A claim was filed in behalf of the section laborers so assigned for the difference between what they received at the section laborers' rate of pay

OPINION OF BOARD: The Organization here has made claim that section forces were required to unload, assemble and install declamatory signs such as highway crossing and derail signs, which it says was work belonging to Bridge and Building Helpers. It claims on behalf of these section forces the Bridge and Building Helper's rate which is higher than that of the section forces. The claim for the higher rate is based on the Composite Service Rule (Article 15).

If there has been a violation as contended, it appears that compensation under the Composite Service Rule is appropriate.

The work involved was unloading and assembling the signs, digging holes, placing the sign posts in the holes, and backfilling. The work involved no particular skills. It was along the tracks of the Carrier.

The question for determination is one of fact as to whether or not the work involved belonged to the Bridge and Building Department. This fact cannot be ascertained from any specific provision of the Agreement. The Organization says it was customarily done by the Bridge and Building employes, and the Carrier says the exact opposite. Neither cites other similar incidents of the performance of like work in support of its position.

This leaves the matter in the field of uncertainty insofar as the Division is concerned. An affirmative Award on a matter of this importance cannot be permitted to rest on conjecture and uncertainty. There should be evidence sufficient to convince that this work reasonably, by reference to the Agreement, belonged to the Bridge and Building employes or that the parties by their acts so treated it before the Division would be justified in upholding the contention of the Organization. The evidence is not so convincing.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 22nd day of July, 1952.