

Award No. 5885
Docket No. MW-5758

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, 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, that:

(1) The carrier violated the effective agreement when they failed to compensate Section Foreman N. M. Martinson and Section Laborers L. H. Klopf and W. P. Moose, at the Bridge and Building Foreman's and the Bridge and Building Helper's rate of pay when they assigned them to unload Bridge and Building material at Madison, South Dakota on September 20, 1950;

(2) Section Foreman N. M. Martinson and Section Laborers L. H. Klopf and W. P. Moose, be paid the difference between what they received at the Section Foreman and Section Laborer's rate of pay and what they should have received at the Bridge and Building Foreman, and Bridge and Building Helper's rate of pay, on the date referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On September 20, 1950, the Roadmaster directed Section Foreman N. M. Martinson and Section Laborers L. H. Klopf and W. P. Moose, to unload a car of Bridge and Building material at Madison, South Dakota.

The material that was unloaded by the track crew consisted of creosote treated bridge timbers 8"x16"x28', and creosote treated planks 3"x12"x16', which were to be used by the Bridge and Building Department employes at a bridge site in the Madison area.

The Brotherhood contended that the unloading of this material was work comprehended in the assignment of Bridge and Building Department employes and that the Track Department employes assigned to the performance of the work should have received the Bridge and Building Foreman and Helper's rates of pay for performing the unloading work.

Accordingly, a claim was filed in behalf of the above-named Track Department employes for the difference between what they did receive at their respective Track Department rate of pay and what they should have received at the Bridge and Building Department rate of pay for service performed on September 20, 1950.

Claim was declined.

in that the section laborers were paid their regular rate even though performing work which properly could have been performed by Bridge and Building laborers whose rate of pay is less than that of section laborers.

The employes contend that the duties performed by the members of the section force in unloading the Bridge and Building material were strictly those of Bridge and Building forces. It will be realized, of course, that a great deal of the work of loading and unloading of material is regularly performed by other than those who use it, which practice has been long established on this and other railroads for many, many years.

The work or duties of unloading material do not require the services of a mechanic or helper, therefore, it is properly that of laborers, or others so instructed, and where the above referred to work was performed by the section force who were paid their regular rates, which are higher than that of Bridge and Building laborers, it is the position of the carrier that they have been fully compensated for the work performed.

Inasmuch as the work performed, in the opinion of the carrier, can properly be required of section forces and was performed by the section force as such who were paid at their regular rates, there would be no basis for the claim. As the section laborers performed laborers' work in this instance to which the section laborers' rate properly applies, and as the claimant section foreman supervised the section laborers in the performance of laborers' work, there can be no reasonable basis for the contention that the Bridge and Building foreman's rate should apply to the section foreman. We have directed attention to Rule 45 (d) which briefly describes the classification of a Bridge and Building carpenter. To properly perform the duties of a Bridge and Building foreman the claimant section foreman would necessarily be able to and "direct the work" of Bridge and Building carpenters in "constructing, repairing, maintaining or dismantling bridges, buildings or other structures * * * or * * * perform miscellaneous mechanic's work of this nature". Section Foreman Martinson, in this instance did not perform such work nor was he sufficiently qualified or experienced to do so.

It is the position of the carrier that the class of work here involved can properly be required of section forces, whenever necessary, at their regular rates of pay, and, therefore, in giving consideration to reasons cited above and in view of the further fact that there is no rule, agreement or interpretation in effect in support of the claim, the carrier respectfully requests that the employes' claim be denied.

All data contained herein has been presented to the employes.

OPINION OF BOARD: The claim here is by the Organization on behalf of a Section Foreman and two Section Laborers who unloaded Bridge and Building material on September 20, 1950 at Madison, South Dakota. They were paid at the regular rates of their respective positions. It is contended that this was Bridge and Building work, therefore they were entitled to the Bridge and Building Foreman's and Helper's rates respectively.

The material was unloaded for storage and not for immediate use. In fact, none of it was used prior to December 1, 1950. Thereafter it was used at several different and separated locations.

Claims similar to this one have been before the Division on previous occasions. In at least one the question presented here was decided favorably to the Organization. Several have been decided favorably to the Carrier. The reasoning of the several rather than the one appears the more convincing.

The conclusion to be drawn from the several is that where the handling is done in connection with or as part of particular bridge construction or maintenance, it is work belonging to Bridge and Building employes, but

where it amounts only to handling and storage for use generally or at some future time, it may be regarded only as the handling of company material. Reason appears to support this conclusion. The work involved here falls within the latter category.

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 24th day of July, 1952.