

Award No. 6053
Docket No. MW-6052

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee Brotherhood:

(1) That the Carrier violated the effective agreement when it assigned Track Department employees in Extra Gang L-32, in lieu of Bridge and Building Department employees, to install culverts at West Chazy on August 14, 1950;

(2) That the Extra Gang employees assigned to the work referred to in part (1) of this claim be paid the difference between the amount received at their own respective rate of pay and what they would have received had they been compensated at the rate of pay applicable to Bridge and Building Department employees;

(3) That the Bridge and Building Department employees holding seniority on the Champlain Division who were deprived of the opportunity of performing the work referred to in part (1) of this claim, be paid at their respective straight time rate of pay for an equal proportionate share of the man-hours consumed by the track forces in performing the above referred to work.

EMPLOYEES' STATEMENT OF FACTS: On August 14, 1950, track forces assigned to Extra Gang L-32, were required to install three culverts under the Carrier's tracks at West Chazy.

Each culvert was of cast iron construction, twelve feet long and eighteen inches in diameter. Approximately fifty man-hours were consumed in the performance of the installation work for which the track forces were compensated at their regular respective rates of pay.

Work in connection with the installation, repair and maintenance of drainage systems on this property has heretofore been assigned to and performed by the Carrier's Bridge and Building Department employees.

The agreement in effect between the two parties to this dispute dated November 15, 1943 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Bridge and Building Department employees have traditionally performed all work in connection with the installation of

On the other hand, Bridge and Building sub-department employees hold and accumulate seniority in the respective classes within the Bridge and Building sub-department, and seniority rights to work of the Bridge and Building class are thereby exclusively reserved to the employees who hold Bridge and Building seniority in preference to employees holding seniority in some other class and/or sub-department.

We respectfully request that our claim be allowed.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and are hereby made a part of the question in dispute.

CARRIER'S STATEMENT OF FACTS: To divert surface water from one side of track to the other, the Carrier's extra gang forces installed three (3) cross-drains through the stone ballast along the right-of-way on the West Chazy station grounds. These drains consisted of three (3) eighteen (18) inch cast iron pipes, each twelve (12) feet in length.

POSITION OF CARRIER: Carrier does not concur with Employees' statement—"Install culverts"—in classifying the work performed at West Chazy on August 14, 1950. The work actually done by the track force was to dig out the stone ballast between the ties and when a sufficient space had been opened, the sectionmen pushed an iron pipe, of the above dimensions, underneath the rails and then filled in the space with the stone ballast. The only tools used were picks and shovels to remove and replace the stone ballast.

When these pipe drains were completely installed, the tops of the pipes were on a level with the bottom of the ties. There is no connection whatever between the work performed and what would be required to install a culvert.

When a culvert is constructed, it is necessary to construct concrete head walls on each side of the track and a concrete wall on the side where the water flows so as to divert it through the drain. In addition, it is customary to have a concrete approach to the drain which receives the water from the stream. The installation of a culvert requires a passageway in the sub-grade below the stone ballast, with carpenters building the forms for the concrete.

In installing these track drains there was no masonry or carpentry work performed. The use of picks and shovels by trackmen to dig a ditch under the track is the customary duty of trackmen and certainly the pushing of a steel pipe through an opening cannot be considered a duty not properly performed by trackmen.

Management affirmatively states that all matters referred to in the foregoing have been discussed with Committee and made part of the particular question in dispute.

OPINION OF BOARD: This claim is that the Carrier violated the effective Agreement when it assigned Track Department employees in Extra Gang L-32 in lieu of Bridge and Building Department employees, to install culverts at West Chazy on August 14, 1950; that the Extra Gang employees be paid the difference between the amount received at their rate and what they would have received had they been compensated at the rate applicable to Bridge and Building Department employees, and that the Bridge and Building Department employees holding seniority on the Champlain Division who were deprived of the work be paid at their respective straight time rate of pay for an equal proportionate share of the man-hours consumed by the track force in performing the above referred to work.

The Employees state that the Extra Gang employees installed three culverts at West Chazy, that Extra Gang employees do not hold seniority in the Bridge and Building Department; that Rules 1 (a), 1 (b), 2, 3 (a), 3 (b) and 18 were

violated by the Carrier. The Employees further state that culverts were installed and not Track Drains, that the cast iron pipes used were eighteen inches in diameter and twelve feet long; that a culvert performs the same function as a bridge and that this work belongs to the Bridge and Building employees.

The Carrier contends that the Employees are seeking to expand the intent and application of the existing agreement; that Extra Section Gang L-32 at West Chazy on August 14, 1950, installed three (3) cross drains through the stone ballast; the drains consisted of 18" CI Pipe 12' long; that no skilled R&B craftsmen were used or needed and that the only tools used were picks and shovels.

Affidavits of Section Foremen are introduced into the record by the Carrier to show past practice, recognized by both parties, under the several Agreements that this work has been performed by track forces.