

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned Water Service Employees to construct a metal fence gate on June 28 and 29, 1951, instead of assigning the work to Blacksmiths from the Roadway Track Department.

(2) Blacksmith J. R. Dollar be allowed sixteen (16) hours pay at his straight time rate account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Storage space for company material at Oswatomie, Kansas was provided by the erection of a suitable fence enclosure, utilizing discarded track rails as fence posts. In lieu of purchasing manufactured fence gates for use on this storage yard enclosure, the Carrier decided to have two fence gates (each 4'6" x 8') constructed out of discarded pipe material. The work was assigned to employees of the Water Service Sub-department who used welding equipment to cut the pipe to the desired lengths, to heat the pipe to facilitate bending it to the form desired, and to weld the pipe lengths to each other in order to complete the proper gate form.

The Carrier, at one time, maintained fence gangs who were assigned to perform all fence work on the property, but by Agreement between the instant parties, fence gangs were abolished and all fence work was thereafter allocated to the Roadway and Track Department. Maintenance of Way Blacksmiths have customarily been assigned to and performed all welding work required in connection with fencing work, including the construction of fence gates.

The Carrier has conceded that there is no question as to fence work being properly performed by employees of the Track Roadway Department, namely track forces, but contends that the construction of a gate structure to be installed in connection with fence work may be properly assigned to employees of any department whether within or outside the Scope of the instant Agreement. Consequently, the claim and all subsequent appeals have been denied by the Carrier.

The agreement in effect between the two parties to this dispute dated February 1, 1951, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

As indicated in Superintendent Halpin's letter of October 20, 1951 to General Chairman Lambert, the construction of gates even for the right-of-way fences was not contracted exclusively to track forces. Water Service forces did this kind of work for years. It was not even contracted exclusively to the Maintenance of Way craft. Right-of-way fence gates were fabricated at Supply Department plants by shop forces and in many instances they were purchased complete from manufacturers. It is clear that this claimant would not have any exclusive right to this work even on a gate for a right-of-way fence, to say nothing of such work for a facility not even remotely connected with the track.

The facility here involved was not a right-of-way fence in any sense of the word; it was not even a fence as that term is generally understood. It was simply part of a structure; one side of a building formed one side of the enclosure. But even if it was a separate enclosure all to itself it would not be a fence as that term is understood on a railroad. It was simply a storehouse facility for the purpose of protecting material and supplies the same as they are protected in other storehouse facilities, except for the protection against weather which was not necessary for the supplies kept in this enclosure. It would not have been impracticable to have constructed a roof over the enclosure if there had been need for one.

There is no more basis for a claim for allocation of this work to track forces than for allocation of construction of stock pens to them. Stock pens are enclosures constructed of what might be termed fences by the same reasoning as calling enclosure in question a fence; but it is significant to note that this stock pen work is allocated to the Bridge and Building Department forces and the stock pens are never referred to as fences. The cost of constructing the enclosure for tanks was charged to a building account under Interstate Commerce Commission Accounting regulations, just as cost of construction of stock pens is charged to a building account. Neither is charged to any account under Roadway or Track.

The facility here involved was simply a structure. It was in no sense a part of or connected with any track. The work of fabricating the gates was part of the building of a structure. It was properly assigned to water service employes who fall within the Scope rule classification of Bridge and Building forces. There is no basis for payment of this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: In the course of erecting an enclosure around a storage yard at Osawatomie, Kansas, the Carrier assigned water-service sub-department employes to the work of fashioning a gate form out of discarded pipe. The work performed by the Water Service employes consisted of heating the pipe to bend it to the desired shape and welding it together.

The Employes assert that the work involved should have been assigned to Maintenance of Way Blacksmiths of the Roadway Track Department contending that Maintenance of Way Blacksmiths have customarily been assigned to and perform all welding work required in fencing work.

Carrier contends that the work involved has not been exclusively performed by the claimant craft but has been previously performed by Water Service Department employes.

Under the instant Agreement seniority rights of employes are confined to the sub-department and seniority district in which employed. Water Service employes hold seniority in the Bridge and Building Department and Blacksmiths as above mentioned hold seniority in the Roadway Track Department.

The use of welding equipment and the performance of welding work is common to the Blacksmiths and the Water Service Department employes. It is not established that the Blacksmiths have by practice performed all weld-

ing in connection with the building of fences on this property. It is clear that Bridge and Building Department employes performed the work of placing the posts for the fence involved consisting of setting rails in concrete. Of that no complaint is made by the employes. This to an extent fortifies the view which we take of this matter to wit; that the enclosure here involved was distinct from a fence erected along the tracks to protect the right of way, and the work in connection therewith was properly performed by employes of the Bridge and Building Department. Inasmuch as Water Service Department employes hold seniority in that Department their right to perform the work was superior to that of the Blacksmiths who held no seniority therein.

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

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1954.