

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

BOSTON AND MAINE RAILROAD

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

(1) The Carrier violated the Agreement when it failed to recall furloughed Terminal Division Carpenters to perform the work of removing ties and planking from the turntable at Marlboro, Massachusetts on December 10, 1952, and in lieu thereof, assigned the work to Steel Bridge Crew No. 1;

(2) Each of the Terminal Division Carpenters in furloughed status on December 10, 1952, be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by Steel Bridge Crew No. 1 in performing the work referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 10, 1952, the Carrier had decided to dismantle and remove the turntable at Marlboro, Massachusetts.

The turntable proper was of steel construction, with the wooden cross ties floored with planking to form a walkway from one side to the other.

Beginning on December 10, 1952, and continuing until completed, the work of removing the ties and planking as well as the dismantling and removal of the steel structure was assigned to and performed by employees assigned to Steel Bridge Gang No. 1.

The work involving the ties and planking is of the nature and character that has heretofore been recognized as belonging to the employees holding seniority as Bridge and Building Carpenters.

Had the Carrier so desired it could have recalled a sufficient number of the Terminal Bridge and Building Carpenters, who were in furloughed status, to perform the work of removing the ties and planking from the above referred to turntable.

A claim was filed in behalf of each of the Terminal Division Carpenters who were in furloughed status on December 10, 1952, requesting that they

It was necessary to remove these ties and the planking in order to get at the steel work which was to be cut up and removed. The ties were not fastened to the turntable but were merely laid on the steel framework and held in place by tie spacers to prevent lateral motion and by wooden headers to prevent sliding end-ways. These headers were wooden beams bolted through to the steel framework. To remove the ties the bolts holding the headers were first burnt off, the headers were then shoved off the framework and the ties were then slid off the end where the headers had been removed. There was absolutely no carpentry work involved and no carpenter's tools were used. Not over five per cent of the time was spent in removing the wood work.

POSITION OF CARRIER: On the authority of the Board's Opinion in Awards 4800 and 5361 this claim must be denied. In the former, Award 4800, a crew of Bridge and Building carpenters was assigned to make repairs to a large outdoor gantry type crane. The steel bridge crew claimed the work. Their claim was sustained, the Opinion stating, "In this case, it is clear that the work done was on an open work steel structure of some height and all the materials used in the repair were steel. So far as appears from the record, no tools commonly used by carpenters in the performance of their usual tasks were used. It was clearly not carpenters' work and, in our opinion clearly the work of steel bridgemen". Please note that the record did not show that any carpenter's tools were used. In the instant case the Carrier states affirmatively that no tools commonly used by carpenters in the performance of their usual tasks were used. There was nothing for carpenters to do. Certainly it was proper to use steel workers to burn off the bolts which held the headers in place. After that it was only necessary to shove or lift off the headers and ties.

In Award 5361 the Board's Opinion reads in part: "Where the work to be protected is entirely steel work we think as a general rule steel employes have the exclusive right to protect the same". In the instant case the work to be performed was entirely steel work. The removal of the ties and planking was merely incidental thereto and could properly be performed by anyone.

It is obvious that an affirmative award is not justified.

All factual data contained herein has been brought to the attention of the Organization.

OPINION OF BOARD: This dispute concerns work involved in dismantling and removing a turntable at Marlboro, Massachusetts. The primary object was to dismantle and remove a structure as distinguished from construction, repair, or maintenance work. A steel bridge crew was used exclusively.

The Organization holds that removal of ties and planking as a part of the dismantling process was carpenter's work and should have been performed by them. The Carrier's position is that no carpenter work was involved and that the steel bridge crew did no work that is exclusively carpenter's work.

The facts of record are controlling of a decision in this case. If the work of removing planking and ties was accomplished as the Carrier represents, then the wood work was not according to plan or design and was no part of the project except as a necessary incident to the steel work.

Work that is incidental and secondary to the primary objective, which, in this case was to dismantle and remove a steel-wood structure usually falls in a twilight zone where no one craft can lay claim to the work and exclude all others.

Rules and practice will make a difference but in the end it is the character of service and not quantity of work which controls.

The Carrier's position in this docket is not strengthened any by its representation that not more than five per cent of the over all time was spent in removing the wood work. Neither is the Organization's reliance on practice in connection with construction and repair a valid consideration where, as here, the character of service did not call into use any of the necessary skills, tools, techniques and work procedures peculiar to the carpenter craft.

The parties are in disagreement about construction details of the structure dismantled and the methods employed for doing the work, but greater reliance must be placed on the Carrier's presentation which is found to be the more positive, and specific as to details concerning the dispute under investigation.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of February, 1955.