

**Award No. 6941**

**Docket No. MW-6777**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Fred W. Messmore—Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of System Committee of the Brotherhood:

(1) That the Company violated the agreement when they assigned trackmen to paint white stripes across 6 highway crossings at Wapakoneta, Ohio on the Toledo Division;

(2) That Carpenters F. P. Howard, V. A. Drury and Ralph Ellerbrock be paid 48 hours each at their respective rates.

**JOINT STATEMENT OF FACTS:** As an added measure of safety it has been determined that all highway grade crossings on the property should be striped with white paint in accordance with newly adopted standards. These standards call for painting a stripe 8 inches wide along both sides of the road way and two 4 inch stripes at the center line. On single track crossings the length of these stripes is 9 feet, and on multiple track crossings the stripes extend a distance of 2 feet beyond the outside rails.

When the painting of these stripes was initiated, it was performed by the hand brush method by section men under the direction of section foremen, but the Carrier has now purchased striping machines which apply uniform paint stripes as the machine is pushed along by hand. These striping machines have been used now for approximately two years.

On February 18 and 19, 1952, crossing numbers 7441, 7443, 7444, 7445, 7446 and 7448 at Wapakoneta, Ohio were striped by trackmen using the hand brush method in accordance with the newly adopted standards. Total labor involved in striping these crossings amounted to 134 hours.

**POSITION OF EMPLOYES:** The Joint Statement of Facts as submitted herein was drafted in its entirety by the Carrier and submitted to the Employees during a conference held February 25, 1953, as a result of the Carrier's advice during a conference held on December 19, 1952, that they were agreeable to a joint submission of the instant dispute to this tribunal.

Although the Employees subsequently advised the Carrier that their proposed Joint Statement of Facts met with the Employees' approval, the statement made in the last sentence of the second paragraph requires clarification.

**OPINION OF BOARD:** The claim here is to the effect that the Carrier violated the Agreement when it assigned trackmen to paint white stripes across six highway crossings at Wapakoneta, Ohio, on the Toledo Division, and the claimant carpenters, three in number, should be paid 48 hours at each of their respective rates. There is a joint statement of facts in this case, which are in substance as follows:

"As an added measure of safety it has been determined that all highway grade crossings on the property should be striped with white paint in accordance with newly adopted standards. These standards call for painting a stripe 8 inches wide along both sides of the roadway and two 4 inch stripes at the center line. On single track crossings the length of these stripes is 9 feet, and on multiple track crossings the stripes extend a distance of 2 feet beyond the outside rails. When the painting of these stripes was initiated, it was performed by the hand brush method by section men under the direction of section foremen, but the Carrier has now purchased striping machines which apply uniform paint stripes as the machine is pushed along by hand. These striping machines have been used now for approximately two years. On February 18 and 19, 1952, crossing numbers 7441, 7443, 7444, 7445, 7446 and 7448 at Wapakoneta, Ohio, were striped by trackmen using the hand brush method in accordance with the newly adopted standards. Total labor involved in striping these crossings amounted to 134 hours."

It is the contention of the Employees that Rule 1(c) of the Agreement is applicable and applies to the claimants in the instant case. It reads as follows:

"Carpentry, painting, glazing, tinning, roofing, plastering, brick-laying, paving, masonry and concreting required in the construction and maintenance of railroad structures, other than tunnels, shall be performed by B&B forces. Such work in tunnels and all concreting by the gunite method shall be performed by tunnel forces."

Rule 1(c) under provisions of Section (b)6 of the effective Agreement reads as follows:

"This Agreement does not apply to \* \* \* the following work when performed by other than B&B forces:

(a) Minor repairs to roundhouses, storehouses and other shop buildings and material storages within the confines of the shop or store yards pertaining to safety, when B&B forces are not available, such as repairing broken boards in floors or platforms, and installing window panes.

(b) Maintaining and painting material bins and tanks within store rooms or oil houses.

(c) Placing of bearings for heavy material where solid platforms are not required.

(d) Any white-washing of structures within the confines of the shop yard or stores yard."

Rule 1(d) reads as follows:

"The following work will be considered a trackman's work: Re-laying and repairing of crossing plank, except at crossings planked solid and requiring framing or fitting, temporary repairs to platforms, roofs, stockpens and other similar work required to be done at once to prevent damage to persons or property, painting of switch stands or other track appliances."

We believe this rule is evidence that the construction and repairing and maintenance of certain types of highway crossings is work that belongs to bridge and building forces. The work of relaying and repairing highway crossings which are planked solid, such as are here involved, is admittedly work of the bridge and building forces and not work of the track forces. Each and every section of the rules requiring bridge and building forces is specifically spelled out in the aforementioned rules. We believe that, under the circumstances involved in this case, the following would be applicable: Award 323. (Language of the same character appears in other awards.) If the Carrier could farm out any part of the labor necessary to its operations, it could arrange with others to do a large part or all of it, impairing the rights of its employees to handle the jobs which the entire spirit and intent of the Agreement assures. The difference would only be one of degree. So long as the work exists in the prosecution of its business, it is theirs under the schedules, and such is the meaning and effect of seniority.

We believe, from a careful analysis of the record and the factual situation here involved, that (1) and (2) of the claim should be and are hereby sustained.

**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

The Carrier violated the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955.