

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to compensate track department employees assigned to Sections 121, 138, and 154 at the respective applicable Bridge & Building sub-department rates of pay for work performed in the unloading and handling of bridge and building materials on July 2, August 13, 14, 18 and 19, 1953;

(2) The Carrier now allow each of the employees hereinafter named the difference between what he was paid and what he should have been paid at the applicable B. & B. rates of pay; number of hours each consumed in performing the Bridge and Building work referred to in part (1) of this claim:

Section 121, Louisiana, Mo.

	August 13,	August 14,	Total.
Otto Twine	4	1 ½	5 ½
I. C. Patton	4	1 ½	5 ½
Robert Farris	4	1 ½	5 ½
Paul Walker	4	1 ½	5 ½

Section 138, Glasgow, Mo.

	August 14,	August 18,	August 19,	Total.
Ralph S. Phillips	4	7	4	15
R. L. Cason	4			4
Orea Winn	4	7	4	15
Henry Vivian	4	7	4	15
Donald Peel	4	7	4	15
G. W. Lindsey	4	7	4	15
George Craig	4	7	4	15
H. E. Maupin	4		4	8
G. W. Harvey	4			4
Elmore Poindexter		7	4	11

Section 154, Independence, Mo.

	July 2, 1953	Total.
Isadore Washington	4	4
Nathan Washington	4	4
Robert L. Shepard	4	4
Bennie Patton	4	4
Alonzo Hickman	4	4
William L. Moss	4	4
William C. Barnes	4	4

EMPLOYEES' STATEMENT OF FACTS: The Employees identified in Part (2) of the Statement of Claim are regularly employed as section laborers (section men) on the respective track sections as shown in the Statement of Claim.

On the dates listed in the Statement of Claim, the Claimant section men were assigned to and did perform work of unloading and handling Bridge and Building materials; the number of hours consumed by each respective Claimant in the performance of such work being shown in Part (2) of the Statement of Claim.

For such services, the Claimant employees were compensated at the regular section laborers' rate and the Carrier has refused to compensate them for such services at applicable Bridge and Building Subdepartment rates of pay.

The work of unloading or handling bridge materials has heretofore been recognized as Bridge and Building work by the Carrier's Chief Engineer, when under date of July 27, 1948, he addressed a joint letter to Mr. M. D. Carothers, Assistant Chief Engineer on the Carrier's Northern Region and to Mr. J. V. Johnston, Assistant Chief Engineer on the Carrier's Southern Region, reading as follows:

"Mobile, Alabama
July 27, 1948

Personal

Mr. M. D. Carothers:
Mr. J. V. Johnston:

It is sometimes necessary that we use our section gangs for unloading or handling bridge materials. This is usually for the purpose of releasing revenue equipment or to eliminate the moving of a bridge gang for a considerable distance to get the material unloaded.

Work of this nature comes under the scope of the agreement and is B. & B. work. When section gangs are used for this class of work we frequently get claims for differences in rates of pay between that of section laborers and the rates applicable to a B. & B. gang.

In the future, when necessary to use sectionmen for the handling of B. & B. material, you should instruct your foremen to properly show on his time book the work which he was doing and to allow the laborers the rate of pay applicable for bridge gang laborers.

It is to be understood that advantage will not be taken of this and section men will not be used for handling B. & B. material or perform B. & B. work except in cases of necessity.

/s/ W. W. Greiner
Chief Engineer

quantities, and stockpiled in the various locations depending upon the circumstances and space available. Certainly no one would say that the handling of such lumber is exclusively the work of Carpenters or that Laborers cannot properly load and unload lumber.

Conclusion

The Employees have shown no justifiable reason whatsoever why Section Laborers should be paid Carpenter's rates of pay in this case. Clearly, such was never the intent of the agreement and is contrary to the accepted practice over the years.

For the reasons herein set forth, we think that the claim is without merit and should be declined.

This claim has been handled in accordance with the provisions of the Railway Labor Act, as amended.

Carrier requests opportunity for oral argument.

(Exhibits not reproduced).

OPINION OF BOARD: The claims before us involve employees of the several sections mentioned in the Statement of Claim; and is a request for a higher rate of pay for work performed while unloading and stock-piling bridge materials at Louisiana, Mo., Glasgow, Mo., and Independence, Mo., on the dates stated. Carrier paid these section laborers at their regular rate of pay, whereas they contend that the work performed calls for pay at Bridge & Building sub-department rates.

These claims are based on Articles 22, 30, and 32 of the parties' Agreement, together with a memorandum issued by the Carrier's Chief Engineer July 27, 1948. The pertinent language follows.

"ARTICLE NO. 22

COMPOSITE SERVICE RULE

"Employees assigned to a higher rated position of one hour or more, will be paid the higher rate for the time so assigned. Regular employees temporarily assigned to lower rated positions in any one day will not have their pay reduced.

"NOTE: When a section laborer is called to assist in wrecking operation to carry materials or wrecking equipment to the point where such materials or equipment are to be used by carmen or trainmen, and the spiking of rerailing frogs placed by trainmen, or the transfer of merchandise or other commodities at wrecks, it is proper that such service be regarded as the work of a section laborer, for which he should be paid section laborer's rate.

"When a section laborer, or laborers, in addition to carrying material and wrecking equipment to a point where such material or equipment is to be used by a carman, or carmen, assist the carman, or carmen, in placing and operating such wrecking equipment, or assists in any other work generally recognized as carmen's or carmen helper's work, then such section laborer, or laborers, should be recognized as performing a class of service recognized as carmen's, or carmen helper's work, for which he, or they, should be paid at the rate applicable to the class of work performed in accordance with this Article."

"ARTICLE NO. 30

CLASSIFICATION OF WORK RULE

"(a) Bridge and building employees' work shall consist of all paint, mason, concrete, wood, steel, iron, tin, and brick work in

the constructing and maintaining of all bridges, shops and road-way buildings, the erection of smoke stacks and smoke jacks, repair and construction of stock pens, water tanks, turntables (see note below), cinder pits, track and stock scales, platforms, shelvings, lockers, tables and other fixtures made in and permanently recognized as B. & B. work, except such work as may be contracted; but does not include mechanics' work manufactured in or sent to the shops for repairs.

"NOTE: The Bridge and Building Department will maintain everything designed by the Engineering Department. This includes:

1. Turntable proper
2. Turntable center
3. Turntable foundation
4. End truck wheels running on circle rail and their bearings, except at terminals where Shop Crafts mechanics are maintained.
5. Circle rail
6. Circle wall
7. Ties and rails on turntable
8. Tractor frame

Sectionmen. Will maintain:

9. Approach rails of track ending on circle wall.

"This Agreement is not applicable to:

1. Electrical fixtures including tractor motor
2. Tractor gears and bearings
3. End truck wheels running on circle rail and their bearings at terminals where Shop Crafts mechanics are maintained.

"(b) Employees covered by this article will not be expected to perform work of any other craft, nor will an employee of any other craft be required to perform work coming within the scope of this article except in an emergency."

"ARTICLE NO. 32

TERMINATION

"(a) Any privileges or practices necessary to meet local conditions and not conflicting with any rules in this agreement are not affected.

"(b) This agreement is a reprint of an agreement effective April 1, 1938, in the name of the present Company, and including new agreements, revisions, interpretations, and rates of pay adopted to date." (Emphasis added).

This Agreement was effectuated February 7, 1950, and is applicable only to the Company's Northern region. A separate agreement was concluded by the parties to cover the Company's Southern region. This was dated April 28, 1950. The fact that there are separate agreements for the Northern and Southern regions is of significance to us here. The Northern region includes the property formerly known as the Alton Railroad. Under the Carrier's Chief Engineer there is an Assistant Chief Engineer for each of the two regions.

Because of a dispute which arose on the Southern Region in 1948, a compromise settlement was reached whereby a section gang was given bridge gang laborers' pay for handling B. & B. materials. Following this settlement

the Chief Engineer addressed a memorandum to his two assistants which is as follows:

"Mobile, Alabama
July 27, 1948

Personal

Mr. M. D. Carothers:
Mr. J. V. Johnston:

It is sometimes necessary that we use our section gangs for unloading or handling bridge materials. This is usually for the purpose of releasing revenue equipment or to eliminate the moving of a bridge gang for a considerable distance to get the material unloaded.

Work of this nature comes under the scope of the agreement and is B. & B. work. When section gangs are used for this class of work we frequently get claims for differences in rates of pay between that of section laborers and the rates applicable to a B. & B. gang.

In the future, when necessary to use sectionmen for the handling of B. & B. material, you should instruct your foremen to properly show on his time book the work which he was doing and to allow the laborers the rate of pay applicable for bridge gang laborers.

It is to be understood that advantage will not be taken of this and section men will not be used for handling B. & B. material or perform B. & B. work except in cases of necessity.

/s/ W. W. Greiner
Chief Engineer

WWG:ae

Copies: Mr. J. Corban
Mr. E. M. Unzicker
Mr. E. G. Wall
Roadmasters
Supervisors
Mr. M. C. Plunk, General Chairman
Brotherhood of M. of W. Employees
Jackson, Tennessee"

The following week Chief Engineer Greiner received the following communication from the Assistant Chief Engineer in charge of the Northern Region:

"Bloomington, Illinois
August 3, 1948

Personal

Mr. W. W. Greiner

I believe that your letter of July 27, in regard to section gangs unloading Company material, and in particular Company material that is used on bridges, was in error addressed to me, for as you know, we do not have any bridge gang laborers on the Northern Region.

Furthermore, Company material on the Northern Region has always been accepted as not belonging exclusively to any one scope

rule for trainmen in handling l. c. l. unload Company material, clerks handle Company material for all departments, Storeroom and Mechanical Department men handle Company material, and members of the Maintenance of Way Department handle and unload Company material.

There has never been any question in regard to the higher rate of pay by section laborers handling Company material, and in the past the only question in regard to making claim for a higher rate of pay was when section laborers performed actual work on bridges and work that definitely required and showed a higher skill than that of section laborers.

Unless you advise me to the contrary, we will continue to handle the matter as we have in the past, and which has been accepted and understood to be the correct procedure by the employees as well as the supervision, that merely the fact that Company material is handled and is later used for bridge work that section laborers are not entitled to any higher or additional rate of pay.

/s/ M. D. Carothers
Asst. Chief Engineer

MDC:JJK

cc: E. M. Unzicker
E. G. Wall"

Petitioners in the matter now before us call our attention to the fact that this latter communication did not reach the General Chairman, and in effect the July 27, memorandum from the Chief Engineer became a matter of agreement between the parties, applicable on both the Northern and Southern regions. In fact, the instant claim rests upon such a premise.

The August 3, 1948 communication from Assistant Chief Engineer Carothers explained what the practice had been on the Northern Region and how it differed from the position taken by the Chief Engineer in settling the grievance on the Southern Region. Apparently the principal difference arose from the fact that the Southern Region had and continues to have "bridge gang laborers", a classification not employed on the Northern Region.

Furthermore it appears that the practice on the Northern Region, both before and after the communication of July 27, 1948, has been one of paying section laborers the higher rate for bridge work only when they actually performed "work on bridges and work that definitely required and showed a higher skill than that of section laborers". This is not an unreasonable practice and should not be disturbed by us until such time as the parties have adopted language in their agreement which is clearly to the contrary.

Claimants insist that the Chief Engineer's July 27, 1948 letter became the basis of such an agreement. This claim is predicated upon the fact that copies of this memorandum were sent to both the Assistant Chief Engineer in charge of the Northern Region and the General Chairman, as well as to the Assistant Chief Engineer in charge of the Southern Region.

The Carrier insists that the memorandum of July 27, 1948 and the reply memorandum of August 3, 1948 were simply an exchange of inter-office communications and that neither is in any sense a binding agreement between the parties. The former communication stemmed from a compromise settlement reached in connection with a particular situation which arose in the Southern Region; and the latter explained the prevailing practice under the Agreement on the Northern Region. There was no agreement reached by the parties which would in any way qualify the language of the February 7, 1950 Agreement on the Northern Region, and if so, the Carrier contends the

Agreement which is of later date is the final word and takes precedence over all prior memoranda (Article 32).

There are many examples of "letter agreements" which are valid and enforceable. They generally take the form of an offer or proposal, from one party to the other, and a reply of acceptance. Or such memoranda agreements may be countersigned. The July 27, 1948 memorandum from the Chief Engineer to other Company officials was neither. The communication was neither addressed to the General Chairman nor acknowledged by him. Therefore, this memorandum lacked the usual formalities of a written agreement.

What the memorandum did, however was to make clear the terms of a settlement reached on a particular issue which arose on the Southern Region. It is binding on the parties in the sense that it sets forth the practice to be followed where the facts and the circumstances are the same. But we do not think that the sending of a copy of this memorandum to the General Chairman, in and of itself, should change the practice on the Northern Region.

We cannot overlook the fact that historically there are two regions, two agreements, and two sets of practice and precedents. The memorandum of August 3, 1948 sets forth the practices and precedents on the Northern Region just as clearly as the memorandum of July 27, set forth a procedure to be followed on the Southern Region.

The work performed by the claimants was not bridge work which required a higher degree of skill and ability than that normally performed by them. The pertinent language of the Agreement (Article 22) requires the payment of a higher rate only where the employee is assigned to do work of a higher rate. These employees only unloaded and stored certain materials to be used in bridge construction at another time and place. They did not perform any of the functions of B. & B. work as those are defined in Article 30. Therefore, we can see no basis for sustaining this claim.

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 agreement has not been violated.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

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