

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(1) The Carrier violated the Agreement when it assigned ten (10) employes holding no seniority in the Bridge and Building Sub-department to perform overtime Bridge and Building work on Bridge 46.47 between 10:00 P. M. on March 14, 1952, and 3:00 A. M. on March 15, 1952;

(2) Bridge and Building Foreman W. Grimm and Bridge and Building Mechanics John B. Antuzzi, George W. Damron, Lloyd D. Kyner, Thomas Mitchell, William Monger, Raymond V. White, and Edward J. Wright each be allowed seven and one-half (7½) hours' pay at their respective time and one-half rates account of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Bridge and Building Foreman W. Grimm and Bridge and Building Mechanics John B. Antuzzi, George W. Damron, Lloyd D. Kyner, Thomas Mitchell, William Monger, Raymond V. White, and Edward J. Wright are regularly assigned to Bridge and Building Gang No. 13, with headquarters at San Jose, California.

At 10:00 P. M. on March 14, 1952, Section Forces under the supervision of Track Foreman Laurenzi with headquarters at San Jose, California, were called and instructed by Roadmaster F. H. Depew to proceed to Bridge No. 46.47 and to remove brush and driftwood that had accumulated around this bridge structure to protect it from possible damage from high water. Track Foreman Laurenzi and nine (9) laborers each worked five (5) hours, or until 3:00 A. M. on March 15, 1952, in the performance of the aforesaid bridge protection work.

Bridge and Building forces assigned to Bridge and Building Gang No. 13 were available, ready, and willing to have performed the work in question, but no attempt was made to call them.

Claim was accordingly filed and progressed in the usual and customary manner with the Carrier declining in all instances to allow the claim.

OPINION OF BOARD: We are here concerned with a claim made in behalf of eight named individuals for 7½ hours pay at the punitive rate of their respective positions account of respondent's alleged failure to call them to clear accumulated brush and driftwood from around the piers of a bridge.

Petitioners assert that this type of work is the usual and traditional work of B&B forces in that it is necessary and incidental to the maintenance of bridges and has in the past been performed exclusively by B&B forces when such forces were available.

Respondent contends that there exists no rule in the effective agreement delegating this or any type of work to the B&B forces; that such work has ordinarily been performed by section forces when available and by B&B crews only when such forces (section) were not available.

While there are conflicts in the record as to past practice in reference to assignment of debris clearance work, we conclude that such work has in the past been performed by both B&B and section forces. Thus, past practice cannot be said to have effectively delegated the same to either group of employees, nor that either group has traditionally and customarily performed same.

Award 4077 of this Division relied upon by the petitioners was predicated on factual circumstances and rules that are clearly distinguishable to those here present.

In the absence of an applicable rule or a clearly defined custom and practice, it cannot be properly found here that the claims are valid.

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 carrier did not violate the effective agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 19th day of December, 1956.