

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE NEW YORK CENTRAL RAILROAD-BOSTON DIVISION OF
THE EASTERN DISTRICT

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

(1) That the Carrier violated the agreement when it cancelled the roster covering positions of Mechanics and Helpers in the Maintenance of Way Department and thereafter assigned the work and positions to a craft other than the Maintenance of Way craft;

(2) That the Carrier be required to restore the roster of Maintenance of Way Mechanics and Helpers dated January 1, 1949 with full accumulation of subsequent seniority of the affected employees;

(3) That all employees affected be reimbursed for all monetary loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The classification of a Maintenance of Way Mechanic is defined as "All kinds of machinery repairing, gas engines, pumps, water stations, crossing gates". Mechanic Helpers are assigned to assist in the performance of the work listed above.

Prior to and on January 1, 1949, a seniority roster was compiled for employees covered by the Maintenance of Way Agreement and among the employees listed therein, we find the following:

It will be observed that this rule requires the employees be paid straight time on five different holidays during the year and which is something that was not provided for in the Shop Crafts Agreement. The Maintenance of Way Organization would, of course, want these men to continue to receive the holiday pay and at the same time enjoy the benefits of the higher Shop Crafts rate of pay. The Carrier cannot agree to any such basis.

When the Maintenance of Way employees first protested the Carrier's action in 1949, the Management offered to permit the men to remain on the Maintenance of Way roster from which they were transferred and allow them to displace junior employees on that roster. If they did elect to follow that course, they would be required to take the positions and rates of the junior employees displaced. In other words, they would not be permitted to carry the higher Shop Crafts rate and at the same time enjoy the benefits of the Maintenance of Way rule. The Maintenance of Way Organization would not accept this proposal.

In a further effort to dispose of the issue the Carrier brought the two organization representatives together with the hope of attaining a satisfactory solution. The organization themselves made further efforts to adjudicate the issue but no satisfactory solution ever came forth.

CONCLUSION:

The Carrier maintains its action in transferring these employees from the Maintenance of Way roster to the Shop Crafts roster was entirely proper. Its investigation showed these employees were definitely performing Machinists work and as such were actually Shop Crafts employees and, therefore, subject to the Shop Crafts Agreement. The only proper course for the Carrier to follow was to transfer the employees to the Shop Crafts roster.

The Carrier has shown that it made sincere efforts to get the matter settled. It made an offer to the Maintenance of Way Employees and it brought the two organizations together, all in the hope that a satisfactory solution could be forthcoming. However, no solution ever evolved.

The Carrier therefore contends your Board should dismiss the claim because,—

1. There has been no violation of the Maintenance of Way Agreement.
2. The Employees were properly put under the Shop Crafts Agreement.
3. The two organizations should settle this issue between themselves and your Board should therefore not accept jurisdiction of the dispute.

All evidence and data set forth in this submission has been considered by the parties in conference.

(Exhibits not reproduced.)

OPINION OF THE BOARD: The claim is that the Carrier violated the Agreement when, in November, 1949, it cancelled the January 1, 1949 roster covering positions of Mechanics and Helpers in the Maintenance of

Way Department and thereafter assigned the work and positions to the Shop Crafts.

The remedy sought is the restoration of that roster, with full accumulation of subsequent seniority and reimbursement for all monetary loss suffered by all employees affected.

The record shows without dispute that the employees on the roster were transferred to the Shop Crafts roster without any loss of seniority and with higher pay rates, but without certain paid holidays. Thus seniority is not involved; and while the amounts of the respective monetary advantages are not shown, apparently the monetary loss involved, if any, is not large. At any rate, the important question is whether the roster was improperly cancelled and should be restored.

The Maintenance of Way Employees Agreement dates back to at least July 1, 1921. Rule B-15, Classifications of Employees, has apparently always included, and still includes, these classifications:

"Mechanics: All kinds of machinery repairing, gas engines, pumps, water stations, crossing gates.

* * * * *

"Helpers: As assigned to any craft."

On January 1, 1949, the roster included five employees under the classification "Mechanics", and three under the classification "Mechanic Helpers".

The record shows without dispute that late in 1927, during wage negotiations, the Shop Crafts committeemen raised a question concerning the representation of employees in the Maintenance of Way Department who were doing work of the kinds listed under the Shop Crafts Agreement as Machinists, Sheet Metal Workers and Electricians.

The Carrier states, that these employees were then included under the classification of Plumbers. The Brotherhood points out that on the seniority roster of January 1, 1949, they were classed at Mechanics and not as Plumbers, but does not allege that they were classed as Plumbers in 1927. In any event the Shop Crafts committee contended that Maintenance of Way employees performing work of the kinds included in the Shop Crafts Agreement belonged under that Agreement although they were, and had always been under the older Maintenance of Way Employees Agreement.

On October 17, 1927, the General Chairman of the Brotherhood of Maintenance of Way Employees wrote the Carrier's Chief Engineer as follows:

"During wage conference held in Boston October 6th, 1927, between the Management of the Boston & Albany Railroad and the Officers of the New York Central System Federation No. 103 representing the shop crafts, the question arose as to the representation of the men employed in the Maintenance of Way Department who are performing work classified under supplement No. 4 to General Order No. 27, the National Agreement and the Shop Crafts' Agreement on the Boston & Albany Railroad.

"I concur with the Shop Crafts Committee on this road, the Bridge & Building Committee of the Boston & Albany System Division do not represent this class of Employees, namely Plumbers, Steamfitters, Sheet metal and Electrical workers, those men should be represented by the Shop Crafts Committee on the Boston & Albany Railroad."

It should be noted that in the first paragraph the General Chairman referred to **"the men employed in the Maintenance of Way Department who are performing work classified under supplement No. 4 to General Order No. 27, the National Agreement and the Shop Crafts Agreement."**

In the second paragraph he concurred with the Shop Crafts Committee that his organization **"do not represent this class of Employees, namely Plumbers, Steamfitters, Sheet metal and Electrical workers, those men should be represented by the Shop Crafts Committee."** Thus, although he mentioned **"Plumbers, Steamfitters, Sheet metal and Electrical workers, his agreement related to all men who were performing work classified under the Shop Crafts Agreement."** His letter indicates that they were then all included under the four headings named, thus confirming the Carrier's statement that these employees were then classed as Plumbers. But regardless of that, some of them were doing work of the kind referred to in the January 1, 1949 Maintenance of Way roster as Mechanics.

The evidence is that 65 employees were involved; for before taking any action the Carrier distributed ballots to that number with the understanding that if the majority so elected their representation would be under the Shop Crafts Agreement. Fourteen failed to vote. Of the 51 ballots returned, 41 were in favor of Shop Craft representation. The change was made in October, 1928. But for some undisclosed reason six of the employees doing work of kinds classified under the Shop Crafts Agreement were not transferred, but were retained on the Maintenance of Way seniority list.

Apparently nothing was done concerning them until August, 1949, when Shop Crafts representatives, in a meeting with Maintenance of Way Department officials, brought to their attention the mechanics and helpers in that department who were doing work classified in the Shop Crafts Agreement. Finding upon investigation that these were the group excluded by the Chief Engineer from the 1928 transfer, and were still performing Shop Craft work and receiving the higher Shop Craft pay, they were transferred as of October 1, 1949 from the Maintenance of Way roster to the Shop Crafts roster.

The delays in submission of the claim to this Board resulted in part from further negotiations, and apparently have not been prejudicial to either party.

There is no doubt that the employees in question were originally properly included in the Maintenance of Way employees roster. But under the circumstances we cannot conclude that their transfer to the Shop Crafts roster by the Carrier, although long delayed after the General Chairman's consent, was unilateral or in violation of the Agreement.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1959.