Award No. 9001
Docket No. MW-8110

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) The Carrier violated the effective Agreement when it assigned the work of unloading steel bridge materials at Bridge No. 71.51 to employes who hold no seniority rights under the provisions of this Agreement.

(2) Riveters Joseph D. Dougherty, Michael DeConno, James J. Doherty and Laurence N. Lessard be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the outside employes in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On September 18, 1952 all of the work of unloading four steel bridge girders, 40 stringers and 12 floor beams, except that performed by two steel bridgemen, at Bridge No. 71.51 was assigned to and performed by six Car Department employes who hold no seniority rights under the provisions of this Agreement. Approximately 68 man-hours were consumed by the outside employes in the performance of this work.

The work was of the nature and character usually and traditionally performed by the carrier's steel bridge gangs.

The claimants' who were regularly employed in one of the Carrier's steel bridge gangs, were available, but were not notified or called to assist in the performance of the work described above.

The Agreement violation was protested and the instant claim was filed in behalf of the claimants.

The claim was declined as well as all subsequent appeals.

unloaded at the site where they were to be used in connection with bridge work. Work done in connection with the unloading thereof was for the purpose of stockpiling the timbers on the site so they would be available when needed. It was not being done, so far as the record shows, in connection with its immediate actual use in bridge construction or maintenance. Until the timbers become an integral part of a bridge construction or maintenance job its handling does not come within the meaning of the language quoted. See Award 5046 of the Division."

and claim was denied.

Again, as in Award 5749, the carrier's position is sustained in Award 5885 wherein the Board said:

"Claims similar to this one have been before the Division on previous occasions. In at least one the question presented here was decided favorably to the organization. Several have been decided favorably to the carrier. The reasoning of the several rather than the one appears the more convincing.

"The conclusion to be drawn from the several is that where the handling is done in connection with or as part of particular bridge construction or maintenance, it is work belonging to Bridge and Building employes, but where it amounts only to handling and storage for use generally or at some future time, it may be regarded only as the handling of company material. Reason appears to support this conclusion. The work involved here falls within the latter category."

and claim was denied.

Carrier respectfully requests that claim be denied.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

OPINION OF BOARD: This claim is based upon the fact that on September 18, 1952, Carrier unloaded the contents of two cars containing girders, floor beams and stringers to be used in the erection of Bridge No. 71.51. The actual erection work did not start until the week commencing November 25, 1952. In this unloading work the Carrier used a wrecker crane, with its assigned wrecking crew. A Steel Foreman, and one Riveter, of the same seniority group as claimants was used in this work. There is no dispute between Carrier and Organization as to these facts.

The Organization contends that: the Carrier used employes outside the coverage of the effective Agreement, and, because of this violation it must pay the named claimants the total man-hours worked by said outsiders, divided equally among them.

In support of their contention the Organization states:

1. The Scope Rule provides that claimants are within the coverage of the Agreement and requires that their working condi-

tions, hours of service and rates of pay be governed by the ensuing rules.

2. Rule 1 (a) provides and requires that employes within the coverage of the Agreement be given a seniority date based upon last entry in the service of the Carrier.

3. Rule 2 provides that employes by virtue of such seniority have a right to positions and the work included therein under the coverage of the Agreement, where ability and merit are sufficient, and thus requires they be given the right to perform the work of such positions within the range of their seniority group or class; and

4. Rule 3 (a) confines such seniority to the sub-department and class in which employed and, as to the claimants in the instant case, Rule 3 (c) extends their seniority rights over the entire system. Thus, Carrier is required to give Claimants the right to perform all work in the Maintenance of Way Department accruing to their seniority class at any point on its property.

The Carrier contends that the only crane assigned to the Maintenance of Way Department of sufficient capacity to be used on this work was in use at the time on another Division some two hundred miles away, so it used the Car Department wrecking crane and crew to assist two employes of the steel gang, including a foreman, for this work. (2) That none of the claimants was qualified to operate the Car Department wrecking crane. (3) That the Organization had the burden of showing that this work was exclusively the work reserved by the Agreement or by practice, custom or understanding to be the work of the claimants.

We find no evidence in this case of actual construction or erection of the bridge itself, such as is performed by Riveters or other steel gang employes, the employes used here were engaged in unloading materials to be used later for the erection of Bridge No. 71.51. So the issue to be resolved in this situation is does the work of unloading of these materials properly belong to the claimants.

Determination of the class to which work belongs rests on the purpose for which it is performed. In this situation it was clearly for unloading of materials for future use in the construction of Bridge No. 71.51.

We cannot agree with the Organization contention that the Scope Rule, Rule 1 (a), Rule 2 and Rule 3 (a) fully support the claimants in this case, because the Scope Rule does not purport to set out or describe the items of work covered by the Agreement between the parties, and this Division has so held in Awards 6007, 7387. This Board has held many times that work reserved to the employes is that which has been traditionally and customarily performed by them. Then it is necessary that the facts established in each case prove that claimant was rightfully entitled to perform the work claimed. The evidence in this case does not support such a claim.

This division in Award 4797, where the same parties, Agreement and rules were involved, held that this type of work does not belong to any particular classification of employes, stating as follows:

"* * * Here, however, the work of unloading the materials was purely for the immediate purpose of storage, one removed from the actual building or repair of the tank itself. The practice of using section men for the performance of this type of work is clearly established. We cannot say that the practice is in derogation of the clear language and intent of the Agreement, since the Agreement does not by wording nor necessary implication set aside this type of work as belonging to any particular classification of employes. * * *"

Based upon the record presented in this case we do not feel that the claimants have shown that the work performed in unloading these materials was work that belonged exclusively to them under their working 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: F. P. Morse
Acting Secretary

Dated at Chicago, Illinois, this 1st day of October, 1959.