

Award No. 9963

Docket No. MW-8680

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement on April 19, 20, 26 and 27, 1954 when it assigned track forces to perform work in connection with the moving of toolhouses on the Kentucky Division.

(2) B & B employes C. Baize and L. M. Daniel, who had been laid off in force reduction and who were available for service in the B & B Department on April 19, 20, 26 and 27, 1954, each be allowed pay at their respective straight-time rates for an equal proportionate share of the 123 total-man hours consumed by track forces in performing the work referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 19, 1954, Bridge and Building Laborers C. Baize and L. M. Daniel were furloughed on the Kentucky Division account of force reduction.

On April 19, 20, 26 and 27, 1954, and while claimants C. Baize and L. M. Daniel were yet furloughed, but available for service, the Carrier assigned track forces to assist Bridge and Building forces to perform work in connection with the moving of toolhouses on the Kentucky Division.

Claim as set forth herein was filed and the Carrier has denied the claim.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, amended September 1, 1949 and November 1, 1950, together with amendments, supplements and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rules 1 and 2, of the effective Agreement, provide for the establishment and confining of seniority rights, and read as follows:

and infrequent nature which cannot be included entirely within the scope of any one agreement, and to assign such work to a particular craft exclusively would result in preventing the Carrier from operating in an efficient manner. The practice on Carrier's property has been to assign track forces to work of this nature. It is Carrier's position that if the B&B Department desires exclusive right to such work it must negotiate a rule with the Carrier in accordance and conformity with the provisions of Section 6 of the Railway Labor Act. In support of Carrier's position, the following is quoted from Third Division Award 5914:

"* * * The practice on the Carrier's property shows that the work involved in this claim was not work given exclusively to the B&B Sub-department although they did most of it. This work has partly been done by men in other crafts. The Claimants have failed to establish their exclusive right to this work. If they desire the exclusive right, they must negotiate a rule with the Carrier."

To sustain the Employees' position in this matter would read into existing rules a requirement that is lacking in practicability, economy, or necessity. It would be at variance with the national transportation policy and Interstate Commerce Act, and your Board would go beyond its function of interpreting existing provisions in the agreement between the parties as delegated by the Railway Labor Act, and in effect write a new rule into the agreement. The Board is referred to First Division Awards 7057 and 14566; Second Division Award 1474; Third Division Awards 389, 871, 1230, 1609, 2612, 2622, 3407, 4763, and 5079; Fourth Division Award 501, and similar awards on all four divisions of the National Railroad Adjustment Board as evidence of such findings.

There is no basis for the claim and it should be denied.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

OPINION OF BOARD: This dispute arose when Carrier used track forces to perform some of the work involved in moving tool houses on the Kentucky Division. It is Petitioner's contention that furloughed Bridge and Building Department employees should have been assigned that work.

It appears that in making the move, Bridge and Building employees attended to the necessary carpentry work but that track forces were called upon to lift, carry, load and unload the tool houses, and to furnish flag protection. It is undisputed that the duties in question are of the heavy labor variety and involve no special skills.

In this factual situation, it is essential to Petitioner's case that it prove by specific evidence or controlling rules that the disputed work belongs exclusively to Bridge and Building employees. Our examination of the record satisfies us that Petitioner has neglected to support its contentions by competent evidence. The Carrier's "Rules for Maintenance of Way and Structures" do not cover the labor work under question and Awards 3685 and 4848 therefore are not helpful. The seniority rules do not affect the situation since there is no question in this case as to Claimants' rights to work that belongs to them; the point is that before the cited rules and principles can come into play, it must first be established, by affirmative proof and not by mere argument, that all labor work involved in moving a tool house belongs to the Bridge and Building Department employees. This the Petitioner has failed to do and the claim will be denied. See Awards 9001, 8092, 7963, 7947, 5869.

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 9th day of June, 1961.