

Award No. 10194

Docket No. MW-8648

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORTHERN PACIFIC RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it assigned other than B&B Department employes to remove the plank covering over Pit #1 in the Mississippi Street Roundhouse and to install sheet iron covering as a replacement thereof;

(2) B&B employes James Palma, W. J. Hayde and D. E. Zackrisson each be allowed eight hours' pay at their respective straight time rates account of the violation referred to in Part one (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Maintenance of Way Employes have historically and traditionally performed work in connection with construction, maintenance or repairs, or dismantling of tracks, structures or facilities in the Bridge and Building Sub-department and in the Track Sub-department of the Maintenance of Way Department as is evidenced by the following letter which appears on page 65 of the effective Agreement.

"Saint Paul, Minnesota,
February 11, 1952.

Mr. J. T. Keyes, General Chairman
Bro. of Maintenance of Way Employes
511 Pence Building
Minneapolis, Minnesota

Dear Sir:

In connection with the agreement between the Northern Pacific Railway Company and the Brotherhood of Maintenance of Way Employes, effective April 1, 1952, it is understood and agreed that:

Practices concerning the performance of work in connection with construction, maintenance or repairs, or dismantling of, tracks, structures or facilities in the Bridge and Building Subdepartment and in

When the Employees raised a question as to whether the work of enclosing Pit No. 1 with sheet steel plating was included within the scope of Rule 63 of the Shop Crafts Agreement effective February 1, 1945, the Boilermakers' Local Committee went on record concerning the performance of this work. The Boilermakers' Local Committee had acquired knowledge of the claim presented by B&B Department employees and that committee addressed the following letter to Master Mechanic O. J. Murphy:

"St. Paul, Minn.
September 7, 1955

Mr. O. J. Murphy:

Referring to the claim submitted by the B&B Department employees for twenty-four hours pay for work performed by shop crafts at Mississippi Street Roundhouse when we installed diamond floor plate over pit in stall No. 1.

We contend that this is boilermakers' work and the B&B Department employees have no right in cutting and applying this diamond point plating and rib steel, and welding of same as this belongs to the boilermakers' craft.

/s/ Shop Chairman
V. T. Bjork
Vice Chairman
O. A. Martin
Local Committee"

If there is any doubt about the position of the Boilermakers' Organization with respect to performing the work of enclosing roundhouse pits with sheet steel plating under Rule 63 of the Shop Crafts Agreement effective February 1, 1945, that doubt is resolved by the position taken by the Boilermakers' Committee on September 7, 1955.

The record in this docket shows no single roundhouse pit has been enclosed with sheet steel plating by B&B Department employees.

The record in this docket also shows that B&B Department employees have not acquired a right by agreement or by tradition to perform the work of placing sheet steel plates over pits in roundhouses.

The claim covered by this docket should be denied.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employees and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Employees state that during the early part of 1955, the Carrier assigned Mechanical Department Employees (Boilermakers and Boilermaker Helpers) to remove the plank covering over Engine Pit No. 1, in the Mississippi Street Roundhouse and to install sheet iron covering as a replacement thereof. The Carrier has violated Rule I, Scope Rule; Rule II, the Seniority Rule; Rule IV, Seniority Limits Rule. Employees of the Maintenance of Way Department have performed work similar to the work here involved in the Carrier's shops, buildings, etc., located on the

right-of-way and used in the same operation of the railway company in the performance of common Carrier service. Claimant James Palma, working as Water Service Mechanic, and available on the dates Boilermakers and Boilermakers Helpers were assigned to perform this Maintenance of Way work, is also classified, as well as qualified, as a Bridge and Building Department Welder and therefore, he should have been used to perform any B&B Department welding work necessary in installing sheet iron covering over this pit. Claimants W. J. Hayde, working as a First Class Carpenter and D. E. Zackrison, working as a Second Class Carpenter, were available and qualified to have performed the necessary carpenter work involved. Rule 63, which outlines the work of Boilermakers, does not contemplate work on buildings, structures or other Carrier facilities.

The Carrier states that on February 2, 1955, a Boilermaker and a Welder employed in the Mississippi Roundhouse removed the planking over Pit No. 1 and then cut, fitted and welded sheet steel plates between the rails over this pit for a distance of 28 feet. The time consumed by the Boilermaker and Welder performing the work amounted to approximately 6 hours and 30 minutes. The work was performed under the jurisdiction of the Mechanical Department.

The issue involved in this docket is whether B&B Department Employees have acquired a right either by Agreement or by tradition and practice to perform the work of cutting, fitting and welding sheet steel plates between rails in a limited area over Roundhouse Pits, and the removing of the plank, which work comes under the jurisdiction of the Mechanical Department.

The Employees have the burden of proof to show that the B&B Department usually and traditionally performed the work in question. This, the Employees have failed to do. On the other hand, the Carrier has shown that in two instances, the same type of work has been performed by Boilermakers and Boilermaker Helpers. The Carrier's superintendent C. W. Coil in a letter addressed March 14, 1955 from Minneapolis, Minnesota, to J. T. Keyes, General Chairman, stated:

"* * * Removing the planking covering Engine Pit Stall No. 1 in the Mississippi Roundhouse undoubtedly is B&B Department work, but the installation of steel plates and the welding of them into place is Boilermakers' work; therefore, their claim for this work is declined."

Due to the admission of the Carrier's Superintendent that the removing of the plank was the Claimants' work, this claim will be sustained as to the removing of the plank. The claim for the laying of the diamond floor plating and rib steel and the welding of same will be denied. Due to the fact that the Employees state that this work was performed on January 28, 1955 and the Carrier states its work was performed on February 2, 1955 and also due to the fact that the Employees' claim is for 24 hours and the Carrier states that all of the work was completed within a total of 13 hours, the monetary claim is referred back to the parties and they shall ascertain how much time it took to remove the planking and then the number of hours taken for this operation will be divided proportionately between the three (3) Claimants.

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 was violated in the assignment of the work as shown in the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1961.