Award No. 10828
Docket No. MW-9791

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned other than Bridge and Building employes to construct five (5) new plank highway crossings at Waukegan, Illinois, during the period from August 25, 1955 through September 13, 1955.

(2) The following Bridge and Building employes each be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the other employes in performing the work referred to in Part (1) of this claim.

B&B Foreman	H. W. Johnson
Carpenter	G. Longanecker
Carpenter	F. P. Nordstom
Carpenter	V. Johnson
Mechanical Helper	M. Popik

EMPLOYES' STATEMENT OF FACTS: During the period from August 25, 1955 through September 13, 1955, the Carrier assigned its Track Department employes to perform work at Waukegan, Illinois which is reserved exclusively to its Bridge and Building employes under the Agreement rules. Specifically, the work consisted of the construction of five new plank highway crossings at the aforementioned locations.

The employes holding seniority in Group 1 of the Bridge and Building Sub-department were available and could have performed the work described above, had the Carrier so desired.

The Agreement violation was protested and a suitable claim filed in behalf of the Claimants.

"Time claims shall be confined to the actual pecuniary loss resulting from the alleged violation."

Inasmuch as each of the Claimants was fully employed and compensated on the dates in question in this case, they suffered no pecuniary loss and, therefore, are prohibited from collecting any additional monies.

The position of the Carrier relative to Rule 62 has been completely supported by this Board in Award 7585 involving the same parties:

". . . Rule 62 of the agreement provides that 'time claims shall be confined to the actual pecuniary loss resulting from the alleged violation.' This provision could hardly be stated in a clearer fashion, and we therefore hold that payments to the two senior track laborers named in the claim are limited under this award to any actual pecuniary loss which they suffered as a result of the violation found herein."

V. CONCLUSION

The position of the Carrier in this case may be summarized by the following:

(1) Rule 56. I (a) and Rule 56. II (a) of the effective agreement specifically designate track forces as those employes who properly should perform work relative to highway crossing when such work is required in connection with the resurfacing of track.

(2) A verbal working agreement between the Carrier and the Organization, evidenced by a letter dated November 20, 1952, from then Assistant to Chief Engineer R. E. Loomis to the General Chairman D. L. Woods, Brotherhood of Maintenance of Way Employes, allows track forces to perform highway crossing work at points distant from headquarters of B&B forces so long as track forces are compensated at B&B rates of pay. Such is the case in this claim.

(3) The second paragraph of Rule 62 of the effective agreement prohibits payment to the Claimants and necessitates dismissal of the claim since the Claimants suffered no pecuniary loss. This proposition is supported by Award 7585 of this Board.

In view of the foregoing, the Carrier asks that the claim in this case be denied in its entirety.

All material data included herein have been discussed with the Organ ization either in conference or in correspondence.

OPINION OF BOARD: A careful study of the Record herein convinces us that the building of the new plank highway crossings at Waukegan, Illinois—resulting from the City relocating a municipal road—was work primarily belonging to the Bridge and Building employes of the Organization. The Carrier ostensibly recognized it as such by establishing B&B rates of pay for the work project.

The Record indicates that on the property Carrier predicated its denial of the Claim on the ground that a "verbal agreement" permitted

its action; however, in our opinion, Carrier offered inadequate proof of the alleged oral understanding.

Carrier's most persuasive argumentation was to the effect that the Waukegan work was primarily for the purpose of surfacing and resurfacing its tracks; and that, therefore, such work was correctly assigned to Track Sub-department employes under the provisions of Rule 56 I (a) and Rule 56. II (a) of the Agreement of the parties, dated August 1, 1952. Carrier stressed this defense in its reply to the Organization's Statement at Oral Hearing held by the Board, in which reply factual allegations were made which enabled Carrier member in panel discussion to develop a more plausible explanation for the denial of the Claim on the property. The referee has considered this appellate argumentation in the context of the positions of the parties on the property.

Granting that the work in question was of the type close to the so-called "twilight" zone, we believe that the Waukegan work was covered by Rule 56 I (a) of the Agreement; that it did not fall within the exceptions stated therein; and that it was "bridge and building" work which should have been assigned to B&B employes.

However, the monetary portion of the Claim before us cannot be sustained because Claimants presented no evidence whatsoever of pecuniary loss.

The Agreement contains the following contractual clauses in Rule 62:

> "Grievances and time claims arising under this agreement shall be barred unless presented in writing to the proper officer within ninety (90) calendar days of the date of events or circumstances giving rise to the grievance or claim.
>
> Time claims shall be confined to the actual pecuniary loss resulting from the alleged violation."

Forceful argumentation has been presented by the Organization, and in its behalf, to the effect that said Rule 62 has been repealed **in its entirety** by Article V of the August 21, 1954 National Agreement to which the parties are signatory.

The referee cannot agree with this theory.

We believe that Article V governs only the subject matter covered thereby. It does not purport to cover all of the matters pertaining to grievances. It pertains almost entirely to **time limits for presenting and progressing claims or grievances.** Those signatory to the National Agreement are subject to its specific provisions, and the respective collective bargaining agreements of the signatory parties are indeed superseded to the extent and degree that Article V is in conflict with them. On the other hand, Article V does not alter Agreements in regard to contractual clauses which it does not purport to cover.

An impartial examination of Article V will quickly reveal that it is silent on the method of computing damages for breach of contract.

We cannot agree that Rule 62 is solely a "time limit" rule. It is not isolated under a caption heading (as is the case in regard to Article V).

Rules 60 to 63, inclusive, appear under the "Schedule" of the Agreement, and said "Schedule" is relevant to the contract as a whole. Most of the matters covered under the "Schedule" have no relationship to Article V.

Rule 62, which has two paragraphs addressed to two different subjects, does not purport to and does not spell out all of the rights of the parties in regard to grievances. See Rule 21 of the Agreement. The Index of the Agreement shows the topic, "Grievances," and the sub-headings thereunder direct attention to Rules 21 and 59. Rule 62 is not referred to at all.

The referee has studied recent conflicting Awards in regard to said Rule 62: Award 10706, dated the 26th day of July, 1962, and Award 10748, dated the 3rd day of August, 1962; and he is of the opinion that the latter is more persuasive. See also Award 7585 on this property.

The decision herein is confined to the particular confronting facts; and, in particular, it upholds the most recent interpretation of this Division of said Rule 62. It does not mean that the Agreement may be violated with impunity; however, we do hold that on this property Claimants must show an actual pecuniary loss in order to be awarded payment of monetary claims.

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 violated.

That Claimants are not entitled to monetary compensation therefor because of the failure of the Employes to show that any of them suffered an actual pecuniary loss.

AWARD

Claim (1) sustained.

Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1962.