

Award No. 11483

Docket No. MW-10961

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, on June 25, 1957, it assigned its Track employees on Sections Numbers 26 and 27 to dismantle and replace a portion of the wooden highway crossing and cross-walk at Vine Street in Willoughby, Ohio and failed and refused to compensate these employees at the B&B Departments rates of pay for such services.

(2) The above mentioned employees be allowed the difference between what they were paid as Section Foremen and Trackmen respectively and what they should have been allowed as B&B Foremen and Carpenters respectively, for the ten hours each consumed in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant Section Foremen and Trackmen were regularly assigned as such on either Section Number 26 at Mentor, Ohio or Section Number 27 at Willoughby, Ohio.

On June 25, 1957 the Claimants were assigned to dismantle and replace a portion of the wooden highway crossing and cross-walk at Vine Street in Willoughby, Ohio.

The Employees contend that the work of dismantling and replacing wooden highway crossings and cross-walks was and is Bridge and Building Department work and that the Claimant Track employees were, therefore, entitled to be paid at the B&B Department rates of pay for the ten hours each consumed in performance of said work.

The Agreement in effect between the two parties to this dispute dated February 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts. (Agreement Number 5.)

Thus it appears that the claim now before this Board contemplates 120 man-hours for twelve employes as against the ten man-hours for four employes contemplated in the claim on the property. The claim has been changed otherwise, such as the change from foreman to foremen, to the extent that it is not the same claim handled on the property.

In conclusion, the Carrier has shown that the instant claim is barred by Article V, Paragraph 1(c) of the August 21, 1954 Agreement, and must be dismissed for that reason.

Furthermore, the claim has been changed from that handled on the property and is otherwise without merit. It should therefore be denied.

All that is contained herein is either known by or available to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier has shown in its Submission that this claim was denied on November 20, 1957, by the Carrier's highest officer designated to handle such matters; also that notice to file an ex parte Submission in this case was not made by the Employes until November 19, 1958.

The lapse of more than nine months between those dates bars this claim from consideration by this Board under the provisions of Article V, Section 1(c) of the August 21, 1954 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 no jurisdiction over the dispute involved herein.

AWARD

Claim dismissed for reasons set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1963.