

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**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 August 19 and 20, 1957, it assigned other than Bridge and Building Department employes to dismantle and replace the wooden highway crossings at Mile Posts 119-20 and 119-40;

(2) B&B Foreman Gee and the four senior Carpenters on his crew 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.

EMPLOYEES' STATEMENT OF FACTS: On August 19 and 20, 1957, the work of dismantling and replacing the wooden highway crossings at Mile Posts 119-20 and 119-40 was assigned to and performed by the Track Department employes assigned to Section No. 19 on the Carrier's Buffalo-Cleveland Division.

The Employes contend that the work should have been assigned to and performed by B. & B. forces and the instant claim was then duly and timely presented. The claim was handled in the usual manner on the property and declined at all stages of the appeals procedure.

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 No. 5)

POSITION OF EMPLOYEES: In a letter dated February 17, 1958, the Carrier's highest appellate officer advised the undersigned General Chairman in part that:

OPINION OF BOARD: It is the contention of the Claimants that the Carrier was in violation of the applicable provisions of the Agreement when it used Track forces to dismantle and replace wooden highway crossings at Mile Post 119-20 and 119-40; that such work is specifically delegated to employes of the B&B Department under Rule 52 (b) of the effective Agreement.

Carrier maintains, however, that the crossings involved in this dispute were private or farm crossings located on the Carrier's right-of-way; that on August 19 and 20, 1957, the main tracks in the territory were being machine surfaced and in order to surface tracks under farm crossings, consisting of some old ties forming the roadway across the tracks, the old ties were removed by the Track forces and were later replaced when the surfacing had been completed; it is Carrier's further contention that this work had always been performed by the Track section forces in connection with maintaining traffic and surfacing track and there is no carpentry work involved; it is Carrier's further contention that this work was properly done by the Track forces within the intention of 52 (c) of the Agreement.

So much of Rule 52 as is pertinent to the current dispute is, as follow:

"Rule 52. — Classification of Work.

"(a) This rule classifies the work to be performed by employes included within the scope of this agreement and is not intended to cover the work to be performed by employes included within the scope of other agreements with railway labor organizations.

"(b) All work of constructing, maintaining, repairing and dismantling buildings, bridges, turntables, water tanks, walks, platforms, highway crossings and other similar structures, built of brick, stone, concrete, wood or steel, and appurtenances thereto, shall be performed by employes in the Bridge and Building Department. This work may be done by contract where there is not a sufficient number of employes available or the railroad company does not have proper equipment to perform it.

* * *

"(c) All work of constructing, maintaining, renewing and removing tracks, roadways, right of way fences and bituminous highway crossings and other work incidental thereto shall be performed by employes in the Track Department. This work may be done by contract where there is not a sufficient number of employes available or the railroad company does not have proper equipment to perform it.

* * *"

In the record it is conceded by both the General Chairman and Assistant General Chairman that the crossings in question were farm or private crossings. That being so, 52 (b) does not apply as that Rule applies to "highway crossings." In Webster's New Collegiate Dictionary a "highway" has been defined as: "a main road or thoroughfare; hence, a road or way open to the use of the public." The rules of contract construction require that unless indicated otherwise, words used in a contract are to be interpreted in their normal and popular sense.

It has been suggested by the Petitioner that this type of crossing might be included within the words "other similar structures." In Rule 52 (b) a "highway crossing" is specifically identified. If any other type of crossing had been intended, the word "highway" could have been eliminated; consequently such a suggestion is not convincing.

The primary purpose of the work the Trackmen were doing was that of surfacing the tracks and incidental to that work was the necessity of removing and replacing ties at farm crossings. This brings the work of the Trackmen in the present situation clearly within the purview of 52 (c) of the 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 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

That the Agreement has not been violated.

AWARD

Claim denied.

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.