

Award No. 11725

Docket No. MW-10984

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, 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 July 5, 1957, it assigned Section Foreman Henry Nunamaker and Trackman Claude Coake, Mark Hardesty, Edward J. Hill, and Earl Martin to perform B&B work in connection with the construction of a highway crossing at Mile Post 347-29 and failed and refused to compensate these employees at the B&B Department rates of pay for services as rendered.

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

EMPLOYEES' STATEMENT OF FACTS: The claimant Section Foreman and Trackmen were regularly assigned as such on the section headquartered at Saybrook, Illinois.

On July 5, 1957 the claimants were assigned to construct a highway crossing at Mile Post 347-29. The work consisted of placing and securing one creosoted plank (4 inch x 8 inch x 18 feet) on each side of each rail and filling the void between the rails with a bituminous mixture.

The Employees contend that the construction of the wooden portion of the above referred to crossing 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 one hour each consumed in the 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

incidental thereto" and as such was properly compensable at the regularly established rates of pay for track forces.

The claim is without merit and must be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: On July 5, 1957 the Claimant Section Foreman and Trackmen were assigned to construct a highway crossing. The highway was a bituminous mixture road. The work consisted of placing bituminous mixture on each side of each rail and holding it in place with one creosoted wooden plank on each side of the mixture. Claimants contend this was Bridge and Building Department work and that they were entitled to be paid at the higher B&B Department rates for one hour each consumed in the performance of the work.

Rule 52 (c) provides in part as follows:

"(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 employees in the Track Department. . . ."

The work must belong to the Bridge and Building Department before higher rate of pay applies.

In Award No. 11478 (Hall) the identical question was decided adversely to the Claimants. In that dispute the Bridge and Building Department claimed the work of construction of a bituminous highway crossing belonged to them and not to Track Subdepartment employees. In a well considered Opinion the Board held that under Rule 52 (c) the work belonged to employees of the Track Department.

That award is controlling here and we adopt and follow it.

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 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 20th day of September 1963.