

Award No. 12304

Docket No. MW-11829

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SAVANNAH & ATLANTA RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when, on February 9, 10 and 11, 1959, it assigned and used its Bridge and Building gang to perform Track Sub-department work in ballasting the track between Mile Post 67 and Mile Post 68.

(2) The section employees regularly assigned to perform Track Sub-department work at this location each be allowed pay at their respective straight time rate for an equal proportionate share of the total man-hours consumed by the other employees in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On February 9, 10 and 11, 1959, the Carrier assigned its Bridge and Building Department employees to perform the historical and traditional work of its Track Sub-department employees. Specifically, the work consisted of placing rock ballast and surfacing the track between Mile Post 67 and 68.

Bridge and Building employees and Track employees hold seniority in separate and distinct sub-departments and are carried on separate seniority rosters.

The Agreement violation was protested and the subject claim was filed in behalf of the claimants. The claim was handled in the usual and customary manner on the property, but was declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated June 17, 1943, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES:

"SENIORITY

Rule 3. (a) The establishment of seniority under this agreement

hood of Maintenance of Way Employees to affect as stable employment as possible.

POSITION OF CARRIER: Since entering into an agreement with the Brotherhood of Maintenance of Way Employees June 17, 1943, the Carrier has made every effort to maintain stable employment for all employees. With a reduction in bridges of 2,136.0 feet, all untreated timber being replaced with treated timber, reduction of 12 agencies, all within the past 30 years, the increasing cost of labor and materials, it has not been possible for the Carrier to afford continuous employment on a small property without utilizing the Bridge gang on track work at times, as shown in Carrier's Exhibit "A".

The Carrier has for many years attempted to stabilize its employees. Reductions have taken place in the past when foremen retired and their men were consolidated into other sections, and through the years there has been a continually lessening of work for the Bridge and Building Gang. The Carrier for years in various conferences attempted to make an agreement with the Brotherhood of Maintenance of Way Employees to eliminate the sub-department of Bridge and Building employees, and place them in their proper places in the Maintenance of Way Roster according to seniority, so as to provide regular employment for senior employees. This is in line with the request of the Brotherhood of Maintenance of Way Employees for stabilization of employment covered by their contract. The Carrier has consistently taken the position that senior employees in sub-departments should be maintained when work in their department is available, provided no employees were cut off in the sub-department where the work is performed, and the maintaining of senior employees is in keeping with the request of the Brotherhood of Maintenance of Way Employees where this can be done without damage to other employees on the payroll and no furloughed employees are affected.

On February 9, 10 and 11, 1959, as claimed by the Brotherhood, the Bridge gang performed track work. However, as noted from Exhibit "A" the Bridge gang also assisted the Sardis section gang along with the Sylvania section gang on January 20, 21, 22, 26, 27, 29, February 2, 3, 4, 5, 9, 10, 11 and 12, 1959. During the winter of 1958-1959 we had above normal rainfall, and track between Mile Post 67 and 67½ being on sand ballast, 70-pound worn rail and 2.0% grade, an operating hazard developed and a 25-mile slow order was placed on the above. The 67 and 67½ Mile Post being on the Sardis section, the Sylvania section gang and the Bridge gang, who were working on the 64¾ Mile Trestle, but due to high water were unable to continue bridge work, were assigned to assist Sardis section with this work. The Extra Gang was engaged in laying rail on the Port Wentworth Lead (Savannah) and all employees holding seniority in the Maintenance of Way Department were employed and received compensation for the above periods.

SUMMARY

1. Carrier does not feel it has violated the effective agreement, as there is no Work Classification Rule in the effective agreement.

(Exhibits not reproduced).

OPINION OF BOARD: The facts state that Bridge and Building Department employees performed the work of placing rock ballast and surfacing the track between Mile Post 67 and 68. This work is performed by Track Department employees under the Agreement. On February 9, 10 and 11, 1959, when the work was performed by the Bridge gang they were being used to augment the section crew when no work was available in their department. If the Bridge

gang had not been utilized new employes would have to have been hired to assist the Section Crew.

The record also reveals that the Bridge Gang at various times for many years had performed this work when no employes on the Section Crew were available, nor was other work available for the Bridge Gang.

Thus we are of the opinion that under the facts and circumstances as presented in this docket and on this property the Agreement has not been violated.

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 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 6th day of March, 1964.