

**Award No. 12726**

**Docket No. MW-11202**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**William H. Coburn, 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 it failed and refused to compensate Track Foreman Guy Carino and Sectionmen Ben F. Maynard, Calogero O. Rausa, Tom E. Moran, Oscar Steward and Arthur Lutz at applicable B&B rates of pay for work performed on October 8 and 14, 1957, in dismantling, installing, repairing and rebuilding motor car set-off platforms between M.P. 86 and 87, between M.P. 93 and 94 and between M.P. 94 and 95.

(2) Section Foreman Guy Carino be paid the difference between what he was paid at the Section Foreman's rate and what he should have been paid at the B&B Carpenter Foreman's rate for his services referred to in Part (1) of this claim.

(3) Each of the sectionmen named in Part (1) of this claim be allowed the difference between what they were paid at the sectionman's rate and what they should have been paid at carpenter's rate for the service referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** On October 8, 1957, the claimant employes dismantled and removed the existing motor car set-off platform in front of the Signal Maintenance building between Mile Posts 86 and 87 and then constructed and then installed a new motor car set-off platform at the same site. Each claimant expended three hours in the performance of the above described work.

On October 14, 1957, the claimant employes dismantled and removed two existing motor car set-off platforms between Mile Posts 94 and 95 and then installed new motor car set-off platforms in their place. On the same date, the claimant employes also repaired one motor car set-off platform between Mile Posts 93 and 94. In the performance of the above mentioned work of October 14, 1957, each claimant employe expended 6½ hours of time.

The claim is without merit and must be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This is the first of a series of five dockets where claims are based upon the allegation that Rule 40 of the Maintenance of Way Agreement was violated when employes of the Track Department, rather than carpenters under the Bridge and Building Department, were required to install and repair motor car set-offs or take-offs at various points along the Carrier's right of way.

Rule 40, entitled "Classification of Work", provides, in pertinent part, the following:

"(a) All work of construction, maintenance, repair or dismantling of \* \* \* platforms \* \* \* and similar structures \* \* \* shall be bridge and building work \* \* \*."

(b) All work in connection with the construction, maintenance, or dismantling of roadway and track, such as rail laying, tie renewals, ballasting, lining and surfacing track, maintaining and renewing frogs, switches, ditching, sloping and widening cuts and banks, right of way fences, highway grade crossings, erecting roadway sign, \* \* \* and all other work incident thereto, shall be track work and shall be performed by employes in the Track sub-department. \* \* \*"

The basic and dispositive issue is the same in all five dockets. Our Award here, therefore, will be controlling. The issue is: does the work belong to section forces in the Track Department under Rule 40 (b) and the practice thereunder, as contended by the Carrier, or does it belong to carpenters of the B&B Department, under Rule 40 (a), as contended by the Petitioner.

Petitioner's position is that there is nothing ambiguous about the language of Rule 40 (a), which says that "All work of construction, repair, etc., of . . . platforms . . . and similar structures . . . shall be bridge and building work"; that, therefore, only B&B forces may install, maintain and repair motor car set-offs or take-offs which, it asserts, are "platforms". And, finally, that no matter what a practice may have been, it may not prevail against the clear and unambiguous mandate of a rule, citing a number of our Awards to that effect.

The Carrier argues that the real issue here is whether the work performed by the section forces encroached upon the duties and work reserved exclusively under the agreement to B&B carpenters. It says that since Rule 40 does not specifically list the work on motor car set-offs or take-offs, practice is controlling. It points to paragraph (b) of the rule as supporting its contention that the work performed on motor car set-offs is an incident of work reserved to track forces. Carrier cites certain recent Awards involving these same parties where the Board denied claim of B&B Department employes for work done by section men on wooden farm crossings and wooden frames on bituminous highway crossings, holding such work to be incidental to trackmen's other duties. (Awards 11485, 11725 and 11478.) It concludes that the work here involved is an incident of trackmen's duties.

If, as the Petitioner argues, Rule 40 (a) applies to motor car set-offs as "platforms", then, of course, past practice is of no avail as a defense to

this claim, But, having examined the photographs of record of the so-called set-off "platform" which is the subject matter of this dispute, the Board is unable to agree with Petitioner's repeated assertions that it is, in fact, a "platform" as that word is used in the rule. The definition of the word, according to Webster's New International Dictionary (Sec. Ed. 1959) is: "(4) A horizontal and generally flat surface, usually higher, and rarely lower, than the adjoining ground or floor; as a street car platform; the platform of a depot; a gun platform; . . . a raised flooring, stage, or dais in a hall or the like, on which speakers, performers, etc., sit or stand." A motor car set-off consists of planks laid parallel to and between the rails of a track. It is fastened to the ties of the track with spikes and thus becomes an integral part of the track structure. It is no more a "platform", as defined above, than is a wooden farm crossing or a wood and bituminous highway crossing. It is a device or contrivance used solely for the purpose of removing a motor car from the tracks which, in itself, is a necessary incident to the work of trackmen in section forces.

Having so found, the Board concludes that Rule 40 (a) does not apply to motor car set-offs. We also find from a preponderance of the evidence of record that the past practice on this property was for section forces to install and repair motor car set-offs; that, as a consequence, B&B forces may not properly claim an exclusive right to perform that work. Accordingly, it is held that Claimants could be required to perform this work and that they were properly compensated therefor.

The claim will, therefore, be denied.

**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 14th day of July 1964.