

Award No. 12727
Docket No. MW-11203

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 on October 8 and 14, 1957 when it assigned Track Department forces instead of Bridge and Building Department forces to perform the work of 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) B&B Foreman H. Mantz and carpenters D. Welch, E. Baker and A. Nardecchia each be allowed 14½ hours' pay at their own respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On October 8, 1957, Track Foreman Guy Carino and five sectionmen who comprised Section Crew No. 12 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 installed a new motor car set-off platform at the same site. Three hours of time was expended by each of the afore-mentioned track department employees in the performance of said work or a total of 18 hours.

On October 14, 1957, the aforementioned section crew 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 afore-mentioned section crew 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 member of the section crew expended 6½ hours of time for a total of 39 hours.

A total of 57 man-hours was thus expended by Section Crew No. 12 in performing all of the work described above.

The instant claim was duly and timely filed; the Carrier declining the claim at all stages of progress.

The Carrier has also shown that even if the work performed were to be classified as that of Bridge and Building employes, the claimants, under the controlling rules, could not possibly have any claim to perform the work and therefore can have no possible claim for not performing it.

Notwithstanding that the claim must be denied on its merits, as above stated, the instant claim is based solely on the same facts and circumstances as a companion claim and is also similar to other pending claims which have been advanced to this Board on bases which are inconsistent with each other. The issues are the same in all cases and the oblique approach adopted is prejudicial to the rights of the Carrier to meet those issues, and this claim should be dismissed for that reason.

(Exhibits not reproduced.)

OPINION OF BOARD: In accordance with the findings and conclusions of the Board in Award No. 12726, this claim also will 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 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 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.