

Award No. 12731

Docket No. MW-11296

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, on August 16, 27 and September 12, 1957, it assigned other than Bridge and Building employees to perform B&B work in connection with the dismantling of the old and the construction of the new highway crossings at Mile Posts 128-38, 129-27 and 130-27.

(2) B&B Foreman Fred Bales and Carpenters Donald Perkins, Robert Norbeck and Oliver Hauk each be allowed twelve and one-half (12½) hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On August 16, 27 and September 12, 1957 the work of dismantling the old and constructing new highway crossings at Mile Posts 128-38, 129-27 and 130-27 was assigned to and performed by Track Department employees.

The work consisted of dismantling the old wooden crossings, the placing and securing of new wooden planking on each side of the rails and filling the void with a bituminous mixture at each location.

The Employees contend that the work of dismantling the old wooden crossings and the installation of the wooden planking in the new crossings should have been assigned to and performed by B&B forces.

The Agreement in effect between the two parties to this dispute dated February 1, 1951, (Schedule No. 5) together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 52(b) provides that all work of constructing and dismantling highway crossings built of wood shall be performed by employees in the Bridge and Building Department and reads as follows:

Section (b); that the crossings in question were in fact bituminous highway crossings; and any argument to the contrary cannot prevail as the matter must be considered closed under the terms of Article V of the August 21, 1954 Agreement.

Carrier has also shown that even if the work were classified as B&B work, which it was not, any compensation for performing such work would be payable to track forces at B&B rates under Rule 51 — Composite Service, and not to the named B&B employees who did not perform the work and who were either unavailable or absent on sick leave.

Carrier has further shown that under the provisions of Rule 54 the penalty claim for work not performed is barred.

The claim is without merit and must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The sole issue here presented is whether the work of removing and constructing bituminous highway crossings belongs to Maintenance of Way employees under the Bridge and Building Department or those of the Track Department under Rule 52, the Classification of Work rule of the Agreement in evidence.

The case is not one of first impression. The Supplemental Board of this Division in two recent (1963) decisions has interpreted and applied Rule 52 under similar factual situations, the identical parties, and the same agreement (Awards 11478 and 11725). There it was held the work properly belonged to employees of the Track Department under paragraph (c) of Rule 52 which reads 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. This work may be done by contract where there is not a sufficient number of employees available or the railroad company does not have proper equipment to perform it.

Nothing contained herein shall prohibit employees in the Bridge and Building Department from continuing the present practice of loading and unloading materials used by bridge and building forces or cleaning up the site after bridge and building work has been completed.”

The Board accepts as sound and controlling the interpretation of Rule 52 as enunciated in the prior Awards cited. Accordingly, that interpretation is adopted and applied here, and the claim, therefore, 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 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.