

Award No. 12732
Docket No. MW-11443

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 assigned other than Bridge and Building employees to construct a vehicular crossing in its Madison, Illinois yards on April 30, 1958.

(2) Bridge and Building employees Axton Collom, Webb Worth, Glen Renshaw, Joe Womack, Walter Eaton and Albert Brown be allowed pay at their respective straight time rates 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 April 30, 1958 the work of constructing a vehicular crossing in the Carrier's Madison, Illinois yards was assigned to and performed by Track Department employees.

The work consisted of transporting second-hand switch ties from the point of storage to the work site, the installation thereof on each side of each rail and the filling of the void with cinders. Thirty-five man-hours were consumed by the Track Department employees in the performance of the aforementioned work.

The claimant Bridge and Building employees, who were regularly assigned to their respective positions on Foreman Blue's Bridge and Building gang, located at Madison, Illinois on the date in question, were available to perform the subject B&B work which was improperly assigned to the Track Department employees.

The Agreement violation was protested and the instant claim filed in behalf of the claimants. The claim was declined as well as all subsequent appeals.

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.

Case No. 4.

Separate claims filed as in Case No. 3 and both progressed to this Board separately but concurrently.

Case No. 5.

Separate claims filed as in Case No. 3 and both progressed to this Board separately but not concurrently.

The Carrier has shown that the portion of the work made the subject of this claim was a part of the installation of a private roadway or crossing constructed of bituminous material and other materials incidental thereto, and that the track employes performing the work were properly compensated at their own rate. No "vehicle plank crossing" or "wooden platform" requiring the services of carpenters was installed. Many years of custom and practice under Rule 52 support this conclusion.

But more important, Carrier has also shown that even in the event it was held that the track forces performing the work should be compensated for such work at B&B rates and the companion claim were to be sustained, such payment would constitute full compensation for the work performed and any claim in behalf of B&B forces for work not performed would be specifically barred by Rule 54.

The claim is without merit and must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties, the facts, the issue and the Agreement in effect in this docket are substantially the same as those upon which the Board rendered Award No. 12731.

That Award, therefore, applies and is controlling here. The claim, accordingly, 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.