

Award No. 12736
Docket No. MW-11720

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
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 Track Department employes instead of B&B Department employes to dismantle an old wood-bituminous highway crossing at Mile Post 175-16-17 at Celia Avenue in Muncie, Indiana and to then construct a new wood-bituminous highway crossing at that same location.

(2) The Carrier further violated the effective Agreement when it failed and refused to compensate those Track Department employes at applicable B&B rates of pay for the performance of the work referred to in Part (1) of this claim.

(3) Track Foremen Lora Phillips and George Bergman each be allowed the difference between what should have been paid at the B&B Foremen's rate and what they were paid at the Track Foreman's rate and that Assistant Track Foreman William Schultz be allowed the difference between what he should have been allowed at the B&B Assistant Foreman's rate and what he was paid at the Assistant Track Foreman's rate for the four hours each consumed in supervising and directing the performance of the B&B work referred to in Part (1) of this claim.

(4) Each of the following Trackmen be allowed the difference between what they should have been paid at the carpenter's rate and what they were paid at the trackman's rate for the hours each consumed in performing the B&B work, referred to in Part (1) of this claim.

Name	Hours Consumed	Name	Hours Consumed
Robert Maynard	4	Claude Phifer	1
Morris Anderson	4	Glen Sutton	1
Eligah Cox	4	Arthur A. Smith	1
Robert Bertram	4		

- (f) Rule 52 is a penalty rule per se and Rule 51 also applies to the same work;
- (g) that a bituminous highway crossing is a wooden platform, a vehicle plank crossing, a wood-bituminous highway crossing, or whatever description the Employees may choose to adopt at the moment as long as it does not follow common usage and conform to the dictionary definition of "bituminous".

The Carrier asks that its submission in the other seven cases herein cited be made a part of this submission to the end that the contradictions and confusions in the position of the Employees in such cases be brought into focus.

As to the merits of the instant claim the Carrier repeats what it said in other like claims—that it has shown that the portion of the work made the subject of this claim was all a part of the work of "maintaining . . . bituminous highway crossings and other work incidental thereto . . ." within the meaning of Rule 52 (c) of the current agreement. As such, it follows that the Track Department employees were properly compensated at their own rate of pay and 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 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.