

Award No. 13629
Docket No. MW-14621

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it assigned other than B&B department forces to perform paving work at East St. Louis, Illinois on crossings at Missouri Avenue, Wall Avenue, 15th and Lincoln Streets, St. Clair Avenue and Lake Avenue on June 4 and 5th, 1962. (Carrier's File 013-293-16).

(2) Assistant Foreman John Kedge (Masonry and Concrete Department) and Concrete Mechanics Rolla Frazier, Joseph Tencich and Louis Hoskins each be allowed 14¼ hours' pay at his respective straight time rate account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The work of paving crossings is one of the customary and traditional duties of employees holding seniority rights in Group 5 of the bridge and building subdepartment.

The Carrier assigned Section Foreman Joe Pierce and Section Laborers Louis Kelly, Wash Gillespie and Charles Madison to perform the work of paving a crossing at Missouri Avenue, East St. Louis, Illinois, on June 4, 1962, and at Wall Avenue, 15th and Lincoln Streets, St. Clair Avenue and Lake Avenue, East St. Louis, Illinois, on June 5, 1962. These employees worked a total of 14¼ hours in performing the subject work.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated May 1, 1952, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The pertinent portion of Rule 2 reads:

"RULE 2—CLASSIFICATION

* * *

Exhibit E—Letter dated November 13, 1962 from the general chairman to Carrier's manager labor relations.

Exhibit F—Letter dated January 10, 1963 from Carrier's manager labor relations to the general chairman.

POSITION OF CARRIER: It is the position of the Carrier that Rule 2 of the current agreement cited by the Organization does not apply in the instant case. The filling of holes in crossings has been accomplished over the years by section forces when dirt, stone, gravel, cinders or other material, which require no pre-mixing or blending, has been used. "Blacrete" is a material which requires absolutely no preparation. It is placed in holes in concrete or asphalt crossings without tamping, rolling or smoothing—the same as any other material formerly used by section men.

The Organization has taken the position that the performance of the above-described work constitutes "paving" within the meaning of Rule 2 of the current agreement, the pertinent portion of which reads as follows:

"Bridge and Building Mason and Concrete Mechanic: An employee assigned in connection with construction, maintenance and dismantling of concrete, brick and stone portions of bridges, buildings, miscellaneous structures and appurtenances; excavation, paving, sewers and general work of this nature in the Bridge and Building Department, shall constitute a Bridge and Building Mason and Concrete Mechanic."

The exclusive right to make minor or temporary repairs to crossings has never been invested in the Bridge and Building Mason and Concrete Mechanics. This may be verified by the rule quoted above. Only when work of this nature is turned over to the Bridge and Building Department does it become the right of the mason and concrete mechanics to perform. The Bridge and Building Department and Track Department are sub-departments of the Maintenance of Way Department, both of which are covered by the current agreement with the Brotherhood of Maintenance of Way Employees.

It has been the practice on this property to use section forces in making minor or temporary repairs to crossings except when it has been necessary to prepare a mixture of materials such as concrete, asphalt or other substance requiring rolling or tamping. Carrier's action, therefore, was not in violation of the existing agreement and the contention of the organization lacks the support of any rule of the agreement.

The Carrier's actions were in accordance with the agreement and the claim of the Organization should be denied in its entirety.

OPINION OF BOARD: This Board finds that it has been the past practice for section men to fill holes in crossings with dirt, stone, gravel, cinders and other material which requires no pre-mixing, blending, tamping, rolling or smoothing and that "Blacrete" likewise requires no pre-mixing, blending, tamping, rolling or smoothing. The Claimants herein are Bridge and Building Mason and Concrete Mechanic employees and have filed herein a claim for work lost by reason of section using "Blacrete" to fill holes. The Claimants base their claim upon Rule which provides in part as follows:

"Bridge and Building Mason and Concrete Mechanic: An employee assigned in connection with construction, maintenance and dismantling

of concrete, brick and stone portions of bridges, buildings, miscellaneous structures and appurtenances; excavation, paving, sewers and general work of this nature in the Bridge and Building Department, shall constitute a Bridge and Building Mason and Concrete Mechanic."

No issue is raised in this docket other than whether or not "paving" would include the use of "Blacrete" to fill holes.

The filling of holes might or might not be paving. The test is whether or not the particular work—filling holes or otherwise—is the exercise of the trade of paving. We do not believe that we have sufficient facts before us in this docket to clearly define what is and what is not paving, but the parties have not interpreted the filling of holes with a substance which requires no pre-mixing, blending, tamping, rolling or smoothing to be paving and neither do we.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 28th day of May 1965.