



Award No. 14396
Docket No. MW-12496

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
GULF, MOBILE AND OHIO RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, on October 23, 1959, it assigned four sectionmen to assist Road Carpenter T. A. Beard in repairing Bridge G-327-0 and failed and refused to compensate the aforesaid employes at the applicable higher Bridge and Building rates of pay while so assigned.

(2) The Carrier further violated the Agreement when it failed to recall furloughed B&B employes to perform the aforementioned work which was assigned to and performed by Track Department employes.

(3) The decision by Chief Engineer Cooper dated February 5, 1960, and the decision by Contract Counselor Steel dated April 14, 1960, were not in conformance with the requirements of Sections 1(a) and (c) of Article V of the August 21, 1954 Agreement.

(4) Because of the violations referred to in Parts (1), (2) and (3) of this Statement of Claim, the Carrier now be required to allow the claim as was presented by General Chairman McGlaughlin under date of December 8, 1959.

EMPLOYEES' STATEMENT OF FACTS: The facts surrounding the presentation of this claim are substantially set forth in the letter of claim presentation which reads:

Mr. S. A. Cooper, Chief Engineer
Gulf, Mobile & Ohio Railroad Co.
Mobile, Alabama

"December 8, 1959

Dear Sir:

On October 23, 1959, four (4) Sectionmen and the Assistant Section Foreman at New Albany, Mississippi, worked four (4) hours each assisting Mr. T. A. Beard, Road Carpenter, in making repairs to Bridge G-327-0.

All laborers on B&B gangs designated as 'Carpenter gangs' will be paid the highest labor rate applicable on the district where work is performed.

An Assistant Foreman will be assigned to all Bridge and Building gangs, regularly working more than eight (8) men exclusive of the Foreman.

Bridge and Building gangs without a carpenter will not be used to make other than minor repairs to roofed buildings or wood platforms attached thereto, and the temporary assignment of carpenters to such a gang will not cause it to be designated as a 'Carpenter Gang.'

OPINION OF BOARD: Organization's letter of claim to Carrier was dated December 8, 1959. The reply of Carrier's Chief Engineer denying the claim was dated February 5, 1960. It merely advises the Organization that "at our conference in Mobile, February 2, 1960 this claim was declined."

It is perfectly clear that the Carrier has failed to meet its obligation under the August 21, 1954 Agreement to "notify whoever filed the claim . . . in writing of the reasons for such disallowance." This default was timely invoked, therefore the claim will be allowed as presented in the General Chairman's letter of December 29, 1959.

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 Article V, Section 1(a) of the August 21, 1954 Agreement was violated.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of May 1966.