

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, on November 21 1963, it assigned or otherwise permitted Mechanical Department employes to assist Bridge and Building forces dismantle a scaffold at the Diesel Shop at Clyde, Illinois. (Carrier's File M-987-64).

(2) Bridge and Building Mechanics W. C. Harbicht and D. A. Wilken each be allowed two (2) hours' pay at their respective time and one-half rates because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On November 21, 1963, the claimants were employed as mechanics with B&B Gang No. 1 headquartered at Clyde, Illinois. The work days of this gang were regularly assigned to end at 4:15 P. M.

On this date, B&B Gang No. 1 was assigned to repair an electrically operated door on the Diesel Shop at Clyde, Illinois, which had been damaged as the result of having been struck by a locomotive. In connection therewith, the B&B forces erected a tubular steel scaffold and placed several 3 inch by 10 inch planks thereon at the proper height to form a platform from which to work.

While engaged in repairing the door, it was discovered that mechanical device that operated the door had also been damaged. Since the repair and maintenance thereof was work of the Mechanical Department, an electrician and a machinist were assigned to make such repairs. To facilitate and thereby expedite their work, the Mechanical Department employes requested and were given permission to jointly utilize the scaffold with the B&B forces.

With the exception of dismantling the scaffold, all work in connection with the repairing of the subject door was completed by the regular quitting time (4:15 P. M.) of the B&B gang. For the purpose of completing this remaining work, the B&B foreman designated one mechanic to remain with him, releasing the balance of the gang. However, because four men were needed to

dismantle the scaffold, the services of the two afore-mentioned Mechanical Department employes were utilized from 4:15 P. M. to 6:15 P. M. to assist the B&B employes with this work.

The claimants were available, willing and qualified to perform the subject overtime service, had the Carrier requested them to remain and do so.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claimants were members of Chicago Division Bridge and Building Gang No. 1 on the date specified in the claim. Early on the morning of November 21, 1963, and before the B&B gang's assigned starting time, a diesel locomotive while moving out of the Diesel Shop at Clyde on track No. 28 struck and damaged an electrically operated roller curtain door that was only partially open. The electric motor, electric connections, rollers, gear housings, and other appurtenances necessary for the operation of the door, were damaged. The door is 12 feet wide and 18 feet high. Two B&B mechanics, senior to claimants, were assigned to assist the one shop craft machinist and one shop craft electrician who repaired the various mechanical and electrical parts that were damaged.

In order to reach the electric motor and the gear housings, these four employes set up a portable scaffold 5 feet wide, 7 feet long made of steel tubes bolted and clamped together, on which they laid three inch by ten inch wooden boards to stand on. These four employes (machinist, electrician and two senior B&B mechanics) worked on and from this portable scaffold all day until 6:15 P. M., moving it from one side of the door opening to the other as the work progressed, until the repairs were completed. After the repairs were completed these same four employes dismantled the portable scaffold, consuming about 30 minutes in taking it down.

The claim in this case, as evidenced by the Statement of Claim, involves only the dismantling of the portable scaffold—it does not involve any of the repairs to the door or its mechanical or electrical parts.

The schedule of rules agreement between the parties effective September 1, 1949 and supplements and amendments thereto is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: We recognize that it is the avowed function of this Board to resolve as many disputes as possible, without, at the same time creating new conflicts. We are limited to the facts of record in appraising the relative merits of the dispute. Although, as the Carrier urges in this case, the claims appear to be de minimus in nature, we are aware that many of these cases are presented as a result of a conflict on basic principles. Therefore, we are always reluctant to side-step the issue the parties want to have adjudicated.

In a good many cases presented to this Board, one of the parties will raise the question of burden of proof. Of course, this is a most legitimate issue. However, we are usually inclined to attempt to find a way to comment on the question which the parties appear to really want answered. Sometimes, however, it is impossible to fulfill this obligation.

In the instant dispute there is a general and specific lack of agreement on every single fact and issue involved. We are unable to ascertain what occurred on the day in question. Likewise, we cannot pinpoint a joinder of issues. The Organization has made a case composed primarily of non-documented allegations. They have failed to introduce any supporting evidence to substantiate the claim presented. In view of the non-conclusive condition of the record, we are compelled to hold that the Organization has failed to sustain the burden of proof required in this case. Therefore the claim is denied.

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 22nd day of June 1966.