

Award No. 15228
Docket No. MW-15785

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
NORTHERN PACIFIC RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it assigned other than Bridge and Building employes to perform crossing installation and extension work at or near Seattle and Woodinville, Washington.

(2) The following named Bridge and Building employes each be allowed pay at their respective straight time rates for the number of hours indicated below because of the violation referred to in Part (1) of this claim:

B&B Foreman	T. A. McLauchlan	20 hours
First Class Carpenter	John Alvick	20 hours
First Class Carpenter	E. C. Heyl	20 hours
First Class Carpenter	L. L. Kelsey	20 hours
First Class Carpenter	Bert Goodman	8 hours
Truck Driver	John Etris	20 hours

EMPLOYEES' STATEMENT OF FACTS: On September 3, 1963, the work of installing a wooden plank highway crossing, approximately thirty-two feet in length, at 26th Avenue Southwest and Iowa Street in West Seattle, Washington was assigned to and performed by Track Department employes.

On October 3, 1963, the work of installing an extension, approximately eighteen feet in length, at each end of an existing wooden plank highway crossing located near Woodinville, Washington was assigned to and performed by Track Department employes.

On November 11, 1963, the work of installing a wooden plank highway crossing at Shilshole Avenue in Seattle, Washington was assigned to and performed by Track Department employes.

The work consisted of hauling the necessary tools and material to the crossing locations, of placing wooden shim material at the proper height and

employees, consisting of four sectionmen and one truck driver, constructed a wood plank crossing in Shilshole Avenue in Seattle, consuming a total of twenty-seven hours in performing this work.

Claim has been presented in behalf of B&B Foreman T. A. McLauchlan, First Class Carpenters John Alvic, Bert Goodman, L. L. Kelsey and Fred Schmall and Truck Driver J. D. Etris, Tacoma Division, for payment of eight hours each at straight time rate on November 11, 1963 account Track Department employees installing the wooden plank crossing in Shilshole Avenue in Seattle. Attached as Carrier's Exhibit F are copies of the correspondence exchanged between the Employees and the Chief of Labor Relations in connection with this claim. The claim of the six B&B Department employees has been declined.

The Agreement governing hours of service and working conditions of employees in the Maintenance of Way Department (Bridge and Building Sub-department, Track Subdepartment and Machine Subdepartment) are governed by the Agreement effective December 1, 1962, which is on file with this Division, and by this reference is hereby made a part of this dispute.

Effective December 1, 1962, a letter agreement was entered into between the Carrier and the Brotherhood of Way Employees allocating the work of removing and installing highway crossings on the North District of the Tacoma Division between B&B Department employees and Track Department employees. Attached as Carrier's Exhibit G is copy of the letter agreement entered into effective December 1, 1962.

The crossings involved in this dispute are located on the North District of the Tacoma Division.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the contention of the Claimants that the work of installing wooden plank highway crossings at certain locations, set forth in the submission, was assigned to and performed by Track Department employees when the work of installing highway crossings was reserved exclusively to Bridge and Building Department employees under the Agreement rules; that, in a conference covering negotiation of the Agreement, effective December 1, 1962, it was agreed that the removal and installation of highway crossings would be assigned to B&B Department employees; that there can be no dispute but that the crossings in question were public highway crossings.

Carrier, to the contrary, maintains that all of the crossings involved were private road crossings and wood plank crossings were installed there by Track Department employees pursuant in each instance to a "Private Road Crossing Permit"; that the Agreement between the parties, referred to in the preceding paragraph, provides that the installation of such private road crossings will be assigned to Track Department employees.

No evidence was offered as to prior practice on the property and, other than a mere assertion, no proof was offered that these were public highway crossings.

For the foregoing reason, this claim will be 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 there has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1967.