



Award No. 18388

Docket No. MW-18702

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement on January 17, 1969, when it assigned track forces instead of B&B forces to perform the work of loading bridge caps at West Knoxville, Tennessee. (System File 1-5/E-265-5).

(2) B&B Foreman A. Adkins, Carpenter S. A. Ash and Carpenter Helpers A. Hayes and A. R. Tallent each be allowed eight (8) hours' pay at their respective straight time rates because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants are the foreman and three (3) members of B&B Gang #3. The character of work reserved to and traditionally performed by the claimants is clearly set forth within Rule 41(a) which reads:

"All work which is done by Company forces in the construction, maintenance, repair, or dismantling of bridges, buildings, tunnels, wharves, docks, water tanks, turntables, platforms, walks, and other structures, built of brick, tile, concrete, wood, or steel, the painting of bridges, buildings, docks, platforms, walks, turntables, tanks and other structures, hand rails in buildings and on bridges, and the erection and maintenance of signs attached to buildings or other structures, shall be performed by employees of the bridge and building subdepartment."

On January 17, 1969, the Carrier assigned Section Foreman C. E. Samples and four (4) track laborers, who hold no seniority within the B&B sub-department, to perform the work of loading second hand bridge caps at West Knoxville, Tennessee. The Bridge caps, which B&B forces had previously removed from a bridge in that vicinity, were then shipped to Moreley, Tennessee, where they were **immediately** unloaded and installed in Bridges 1 and 2 by the claimants. Bridges 1 and 2 are located in the Simcox tracks and are owned by the Simco Mine.

The work of loading bridge material is work that is encompassed within Rule 41(a) and, therefore, it is work of a character that is contractually reserved to B&B forces. Heretofore the Carrier has customarily and traditionally assigned B&B forces to perform all work of this character. The claimants were available and would have willingly performed the work involved here if the Carrier had so desired.

Claim was timely and properly presented and handled by the Employees 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, 1960, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The Simcox Mining Company owns and operates a mine at Morley, Tennessee, which is served by the carrier. There are two privately owned bridges, Nos. 1 and 2, located on the tracks of the coal company.

On January 17, 1969, one of the carrier's B&B gangs, Foreman A. Adkins and crew, worked on Bridges 1 and 2, installing caps at the expense of the coal company.

The caps which were used were the property of the Mining Company, having been purchased from the carrier at West Knoxville. They were loaded at West Knoxville by a track gang for shipment to the Mining Company at Morley, 68 miles north of West Knoxville.

Employees claimed that the agreement was violated when the track men loaded the caps, it being their position that Foreman A. Adkins and his gang should have been permitted to load the caps at West Knoxville. Carrier saw no basis for the claim, and it was declined. Correspondence exchanged in connection with the claim is attached and identified as Carrier's Exhibits "A" through "H".

There is on file with the Third Division a copy of the current working rules agreement, and it, by reference, is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein arose in connection with the loading of second-hand bridge caps at West Knoxville, Tennessee, by section forces. The bridge caps were shipped from West Knoxville to Morley, Tennessee, where they were immediately unloaded and installed by Bridge and Building employees on bridges Nos. 1 and 2, located on tracks of a coal company at Morley.

The Petitioner contends that the loading of the bridge caps at West Knoxville should have been performed by Bridge and Building forces.

Under Rule 3 of the applicable Agreement employees are grouped in subdepartments, namely

- 3(a) Track Subdepartment
- 3(b) Bridge and Building Subdepartment.
- 3(c) Pump Repairmen and their Helpers
- 3(d) Welding Subdepartment.
- 3(e) Maintenance of Way — General.

As the bridge caps were being transported for the immediate use of Bridge and Building forces, the rights of Bridge and Building Subdepartment employees were infringed upon by the use of Track Subdepartment employees to load the caps. The Carrier contended on the property and in its submission to the Board that it only took two men and a crane operator thirty-five minutes to load the material. Such contention has not been refuted. We will sustain the claim to the extent of allowing each of the named Claimants additional payment for thirty-five minutes at their respective straight time rates.

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 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 violated.

AWARD

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1971.