



Award No. 18441
Docket No. MW-18695

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

BURLINGTON NORTHERN INC.

(Formerly Chicago, Burlington & Quincy Railroad Company)

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

(1) The Carrier violated the Agreement when it used Track Sub-department employes instead of Bridge and Building Sub-department employes to repair the depot platform at East Dubuque, Illinois. (System File M-1307-69/20-3).

(2) The Carrier further violated the Agreement when it failed and refused to compensate the aforementioned Track Sub-department employes at the appropriate B&B rates of pay for performing the work referred to in Part (1) of this claim. (System File M-1306-69/20-3).

(3) B&B Foreman E. C. Wojahn; Mechanics K. E. Suchanek, C. F. Horstman, J. L. Christen, G. A. Schaldack; and Helpers D. L. Loomis and R. W. Jacobson each be allowed two hundred sixteen (216) hours pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

(4) (a) Claimants E. H. Eggers and C. M. Johnston be allowed the difference between what they should have been paid at the B&B foreman's rate of pay and what they were paid at the track foreman's rate of pay;

(b) Claimants R. J. Soat, E. Kenyon, H. H. Eggers, C. C. Horner and C. V. Potter be allowed the difference between what they should have been paid at the B&B mechanic's rate of pay and what they were paid at the section laborer's rate of pay; and

(c) Claimants R. L. Kendall, E. R. Caya and H. W. Beard be allowed the difference between what they should have been paid at the B&B helper's rate of pay and what they were paid at the section laborer's rate of pay because of the violation referred to in Part (2) of this claim.

larly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day. Except in reduction of force, the rate of pay of an employee will not be reduced when temporarily assigned by proper authority to a lower rated position."

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 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: During the period September 17 to October 24, 1968 inclusive, the members of East Dubuque Section No. 7 and Cassville Section No. 11 were used in the performance of all work incident to the laying of new continuous welded rail through the station limits of East Dubuque, Illinois. Section No. 7 consisted of Foreman E. H. Eggers and three laborers, and Section 11 consisted of Foreman C. M. Johnston and five laborers.

The work performed by these section forces at East Dubuque consisted of removing all of the old ties, ballast and rail adjacent to the depot platform, and laying all new ballast, ties, and new continuous welded rail. In performing this track work, it was also necessary for the section forces to remove the old planking and black top between the curbs that retain the blacktopped platform on either side of the track, and replace this with new planking and black top as the rail relay progressed.

The claim in this case is based upon the allegation that section or track sub-department forces were used "to repair the depot platform at East Dubuque, Illinois," instead of using Bridge and Building Sub-Department employees for the work. Based upon that allegation the Employees are herein claiming the higher B&B rates of pay for the section forces performing the work as described, and penalty payment to B&B Department employees allegedly deprived of the work.

OPINION OF BOARD: During the period September 17 to October 24, 1968, inclusive, the members of East Dubuque Section No. 7 and Cassville Section No. 11 were laying new continuous welded rail through the station at East Dubuque, Illinois. The work of the section forces included removing all the old ties, ballast and rail adjacent to the depot platform; and, laying all new ballast, ties and new continuous welded rail. In the performance of the work the section forces removed existing planking and blacktop between the curbs that retained a blacktopped platform on either side of the track, and replaced it with new planking and black top as the rail relay progressed. It is the work performed relative to that platform that is here involved. It is Petitioner's contention that: (1) the work was reserved to employees in the Bridge and Building Sub-Department; (2) the performance of the work by Track Sub-Department employees violated the Agreement; and, (3) Claimants are contractually entitled to be compensated as prayed for in the Claim to make B&B employees whole for loss of the work.

The Scope Rule of the Agreement is general in nature. For Petitioner to prevail it had the burden to prove that the work, by history, tradition and custom, was, system-wide, exclusively performed by employees in the B&B Sub-department.

Carrier's defenses are that: (1) the work was incident to the work of the rail laying; and (2) Petitioner has not proven that the particular work under the prevailing circumstances had been performed exclusively — historically and customarily — by B&B employees on Carrier's property.

From the record made on the property we find that the work was incidental to the performance of the rail laying; and (2) Petitioner failed to prove by a preponderance of proof that under the prevailing circumstances the work was by application and interpretation of the Agreement exclusively reserved to B&B Sub-Department employees. Consequently, we are compelled to deny the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1971.