NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21616
THIRD DIVISION Docket Number MW-21770

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Terminal Railroad Association of St. Louis

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

(1) The Carrier violated the Agreement when it failed and refused to allow Track Laborers R. Griffin and W. Smith pay at the Bridge and Building Mechanic's rate for four and one-half (4-1/2) hours of work they performed on January 14, 1975 (System File 1975-2/013-293-16).

(2) Track Laborers R. Griffin and W. Smith each be allowed the difference between what they should have received at the Bridge and Building Mechanic's rate and what they were paid at the track laborer's rate for four and one-half (4-1/2) hours on January 14, 1975.

OPINION OF BOARD: Claimants, both Trackmen, were assigned by Carrier as part of a gang of four men to repair a rail joint on January 14, 1975. The rail joint in question was on a street where the pavement extended between and on each side of the track. To repair the rail joint it was necessary to remove the pavement adjacent to the rail joint; the area of concrete involved was approximately ten to twelve feet long, three to five feet wide and six to eight inches thick. The entire project for the crew of four, including breaking up the concrete, took four and one half hours. Claimants herein claim four and one half hours pay (difference between their rate and that of the B & B Mechanic) for performing the work of the "Bridge and Building Mason and Concrete Mechanic".

Rules cited by the parties as relevant to this dispute are:

"RULE 2
CLASSIFICATION

Track Sub-Department

Track Laborer: An employe assigned to maintaining, repairing or construction of track, including stability of roadbeds, loading or unloading track material and miscellaneous labor work not performed by employes in other classifications shall constitute a Track Laborer.

Bridge and Building Sub-Department

Bridge and Building Mason and Concrete Mechanic: An employe assigned in connection with construction, maintenance and dismantling of concrete, brick and stone portions of bridges, buildings, miscellaneous structures and appurtenances; excavation, paving, sewers and general work of this

"nature in the Bridge and Building Department, shall constitute a Bridge and Building Mason and Concrete Mechanic."

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"RULE 39
COMPOSITE SERVICE

An employe working on more than one class of work on any day will be allowed the higher rate of pay for the actual time worked in the higher rated position. When temporarily assigned by the proper officer to a lower rated position, his rate of pay will not be reduced."

Carrier takes the position that the work of breaking up concrete or other hard-surface materials is customarily assigned to the class of employe who is needed to make the sub-surface repairs. Thus, it is contended that the work of breaking up the concrete is defined as miscellaneous and incidental work for Track Laborers in order for them to get to the area of needed repairs. It is urged that such work is part of the Track Laborers' usual and customary work and has never been the exclusive work of B & B Mechanics. Carrier argues that the Scope Rule of the Agreement is general in nature and the work in question herein does not belong to any class or craft of employe exclusively.

The Organization contends that the Classification Rule is clear and unambiguous and specifically in the description of the work of the Bridge and Building Mason and Concrete Mechanic the work in dispute is covered. Further, it is argued that the Track Laborer's work as described in Rule 2 contains nothing relating even remotely to breaking-up and removing concrete. The Organization points to Rule 39 (supra) as providing for payments to employes working on more than one class of work in any one day. Petitioner also challenges Carrier's assertion of a long established practice.

Both parties refer in their submissions to an earlier dispute (Award 20710) with the same parties involving a related but different problem. However, in that case Carrier in its rebuttal submission stated that Bridge and Building Mason and Concrete Mechanics were utilized to remove and replace the paving necessary for the track repairs; further that the Track Laborers did not possess the necessary tools and supplies to perform the extensive removal and replacement of paving. Carrier differentiates that situation as a project taking eight days whereas the instant dispute involved a total of four and one half hours.

While we recognize the validity of Carrier's assertion that the Scope Rule herein is general in nature, that point is not relevant to this dispute in the light of Rule 39 (supra) which specifies the possibility of employes working in more than one class in one day. Carrier's statement in Award 20710 supports Petitioner's position; furthermore the amount of

time spent in breaking up the concrete is not the determining factor. Furthermore Carrier has not substantiated its position with respect to the practice of breaking up concrete with any evidence whatsoever, merely assertions. The provisions of Rule 2 defines the work attributable to the various classes and the work in question comes under the clear purview of the Bridge and Building Mason and Concrete Mechanics. Since the rule is clear and Carrier has failed to support its assertion of long practice with evidence, the position of Petitioner must be sustained. With respect to the remedy, however, the record is not clear. We shall direct the parties to make a joint check of Carrier's records to determine the amount of time spent in breaking up the concrete and that time shall be pro-rated between the two Claimants; they shall be paid the difference between the Mechanics rate and what they were paid for that period of time.

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 violated.

A W A R D

Claim sustained to the extent indicated in the Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1977.