

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29877
Docket No. MW-29889
93-3-91-3-265

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad
(Company

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

- (1) The Agreement was violated when the Carrier assigned B&B Carpenters J. D. Cornwell and C. H. Cornwell to perform steel bridge erection work on Bridge #1963 at Davenport, Iowa on August 22, 23 and 24, 1989 and on Bridge #I-830 near Moseby Junction, Missouri on September 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21 and 22, 1989 instead of assigning Steel Erector S. A. Tarras thereto (System File C #38-89/800-46-B-351 CMP).
- (2) As a consequence of the aforesaid violation, Steel Erector S. A. Tarras shall be allowed pay for the difference in his extra gang laborer rate of pay and the steel erector rate of pay for thirty (30) hours for work performed at Bridge #1963 (\$138.90) and one hundred twenty (120) hours for work performed at Bridge #I-830 (\$760.80)."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Although the Organization questions in its Submission what it describes as Carrier's unilateral decision in 1989, to abolish positions traditionally assigned to the System Steel and System Pile Driving Crews within the Bridge and Building (B&B) Subdepartment and substitute new positions on a System Bridge Crew (Steel Bridge Foreman; Assistant Steel/Carpenter Foreman; Steel/Carpenter Erectors; Steel/Carpenter Helpers), it appears from the record that on December 9, 1989, the parties entered into a Memorandum of Agreement authorizing these combined positions in recognition of the operational need to reduce the two crews and combine the remaining force.

What is in dispute here is the statement included in the Agreement that "It is not the Carrier's intent to utilize carpenters within the combined crew to perform steel erector's functions for which they do not possess the necessary seniority and skill level."

Claimant, who has seniority as both a Steel Erector and a Steel Erector Helper, bid on three of the new positions on the System Bridge Crew, but was not awarded any of them. He consequently worked as an Extra Gang Laborer. The Organization contends that on the dates in question, the two successful bidders for the two Steel/Carpenter Helpers positions "Carpenters" performed "the character of work" customarily and historically performed by Steel Erectors and Steel Erector Helpers. That work involved aligning and completing steel connections and operating such tools as automatic air wrenches, back out guns, and reamer motors. Under various provisions of the Schedule Agreement, this work accrues to those in Claimant's classification.

It was argued by Carrier that the two men performed work that had previously been done by Helpers, regardless of whether they were Steel Erector Helpers or Carpenter Helpers. Carrier noted on the property that "The work at issue has consistently been performed by carpenter helpers while assisting the steel erectors."

Carrier pointed out in its submission that:

"Since the majority of the work was expected to be in the steel bridge area, the crew was set up with five (5) former steel bridge positions. Two (2) of the personnel hired for the crew were of carpenter backgrounds and were classified as steel carpenter helpers. ...the two (2) helper positions were

established to assist the steel erecting crew in doing their assigned tasks as well as to handle carpentry work which might arise incidental to the steel erecting crew's duties. Helpers were expected to assist the steel erectors in performing their tasks...."

It is Carrier's position that the two Helpers in the crew were only to assist the Steel Erectors. They were not to perform steel erecting work unassisted.

Carrier contends that the Organization has failed to show that the work involved required the necessary skills of Steel Erector Helpers or to refute Carrier's assertion that Carpenter Helpers have assisted Steel Erectors in the past.

At the point when the Memorandum of Agreement at issue here was signed, it was already clear that of all the new combined titles in the crew, all holders of those titles were to have prior Steel Erector experience, with the exception of the two Steel/Carpenter Helpers, who were to have seniority on the Carpenter roster. And, in fact, by the time the Agreement was entered into, all of the positions on the new crew were filled. Thus, the language in dispute here ("It is not the Carrier's intent to utilize carpenters within the combined crew to perform steel erector's functions for which they do not possess the necessary seniority and skill levels") clearly applied to these Steel/Carpenter Helpers and to these individuals alone.

Under the Organization's position, the Carpenters would rarely be able to do Helpers work, since, as pointed out by Carrier, the majority of the work to be performed by other crew members was in the steel bridge area. At the same time, if one accepted the Organization's reasoning in regard to the limitations on the type of work that could be performed by those holding seniority as Carpenters, the same would have to be true for those with Steel Erector seniority. Thus, the new combined titles of Steel/Carpenter would be rendered meaningless.

This Board agrees with the Organization that the record is devoid of any evidence to support Carrier's assertion that Carpenter Helpers have assisted Steel Erectors in the past, but a reading of the language in dispute, in light of the facts of this case, lends support to Carrier's interpretation of the Agreement. The Organization agreed to the new combined titles. It is reasonable to conclude that the section in regard to Carpenters was designed to avoid the possibility of Steel/Carpenter Helpers performing steel erecting work unassisted. Even if one insists that this language should be applied when Helpers assist in steel

erector work, the burden would be on the Organization to show that the Steel/Carpenter Helpers lacked the "skill level" to work in this area. There is no such evidence in the record.

By this claim, the Organization appears to be seeking to turn back the clock, prior to the time the new crew was established. The parties' Memorandum of Agreement is an established fact and this Board has no basis for rejecting its terms.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: *Catherine Loughrin*
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.