Award No. 12
Docket No. 12

PUBLIC LAW BOARD NO. 76

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

Roy R. Ray - Referee

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement when it called and used Track Laborers D. D. Paul and J. E. Autrey in assisting Bridge and Building Gang on Sunday, April 4, 1965, in repairing Bridge 93.2 and compensated the above mentioned individuals at Track Laborer's rate of pay.

2. Track Laborers D. D. Paul and J. E. Autrey be compensated at Bridge and Building Mechanic's time and one-half rate of pay instead of Track Laborer's time and one-half rate of pay which they received.

OPINION OF BOARD: The ultimate issue involved in this case is the rate of pay claimants should have received for the work performed on overtime on Sunday, April 4, 1965. About midnight on April 3, 1965, a freight train enroute from Rotan to Bellmead, derailed one car near MP 94. The car was dragged some distance eastward and over a bridge near MP 93.2 damaging some of the ties. Section Foreman E. B. Foster, headquartered at Hico, and Section Foreman Chancellor at Carbon were called and instructed to proceed to the scene of the derailment and make necessary repairs to the track between MPs 93 and 94. Foreman Foster and Track Laborer Autrey (Claimant) arrived at the scene about 9:45a.m. on Sunday, April 4, and worked until 7:45 p.m. Foreman Chancellor and D. D. Paul (Claimant) arrived some two hours later and worked until 7:45 p.m. Both crews worked at repairs to the track on and off the bridge. It appears that some 18 ties were replaced between MPs 93 and 94 but there is no

evidence as to how many of these ties were on the bridge.

The Organization contends that Claimants Autrey and Paul performed work of a character recognized as belonging to Bridge and Building Mechanics and should have received the rate for that classification instead of the Laborer rate which they were paid. It asserts that most of the work performed by Claimants was in replacing damaged ties on the bridge. It relies upon Article 5, Rule 11 and Article 16, Rule 1, of the Agreement to support its position, claiming that both were violated by Carrier.

Article 5, Rule 11 provides in part:

> Laborers will not be attached to the Bridge and Building gangs, nor shall laborers be used to perform work generally recognized as Bridge and Building work ...

Article 16, Rule 1 reads:

> An employe working on more than one class of work on any day will be allowed the rate applicable to the character of work preponderating for the day, except that when temporarily assigned by the proper officer to lower rated positions, when such assignment is not brought about by a reduction of force or request or fault of such employe, the rate of pay shall not be reduced.
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> This rule not to permit using regularly assigned employes of a lower rate of pay for less than half of a work day period to avoid payment of higher rates.

It is clear fromthe record that Claimant Autrey worked a total of ten hours and Claimant Paul worked eight hours on April 4, 1965, at the scene of the derailment. The pivotal question is whether a preponderate amount of that time was spent in performing work belonging to the Bridge and Building Mechanics classification. The burden of proving this rests upon the Organization. In our judgement it has wholly failed to discharge the burden.

It has no concrete evidence that more than half of the time worked by either of the Claimants was spent on work belonging to the Bridge and

Building Mechanics.

Furthermore, there is evidence in the record directly disputing the Organization's contention. Foreman Foster with whom Autrey worked stated in a letter to General Chairman Jones that not more than three hours of the time was spent in replacing ties on Bridge 93.2 and that the other time was used in repairing broken joints and waiting for train 97 to see it safely over the track. Preponderate means more than half and three hours out of a total of ten worked is clearly not a preponderate amount of the work performed by Autrey that day. Foreman Chancellor, with whom Claimant Paul worked, stated, in a letter to Chairman Jones that "we worked about 30 minutes on bridge 93.2". This is far less than half the total of eight hours worked by Paul that day. It should be kept in mind that Chancellor and Paul arrived at the scene some two hours after Foster and Autrey and this may account for the difference in the amounts of time the two crews worked on the bridge. Even if we assume that all of the hours worked on the bridge were spent in performing work that was exclusive work of the Bridge and Building Mechanics, Claimants would still not qualify under Article 16, Rule 1, for the Bridge and Building rate for the work on April 4, 1965.

There is evidence that some eighteen ties were replaced by the section crews between MP 93 and 94. The Organization has asserted that all of these were on the bridge, but it has produced no evidence to show that any particular number were replaced on the bridge. So even if the Claimants spent a preponderate amount of their time on April 4, replacing ties this would not entitle them to the Bridge and Building rate without proof that replacing the ties is the exclusive work of that classification. This it did not and cannot do. Awards

of the Third Division in claims originating on this property have held that work performed on a track even on a bridge is not the exclusive work of Bridge and Building Mechanics. Awards 5870 and 6151. It necessarily follows that no violation of Article 5, Rule 11, has been established.

We hold, therefore, that the Organization has failed to prove a violation of any of the rules relied upon or to show any basis for payments to Claimants of a higher rate than they received for the work performed on April 4, 1965.

AWARD

The Claim is denied.

Public Law Board No. 76

Roy R. Ray
Neutral Member and Chairman

A. J. Cunningham
Employe Member

A. F. Winkel
Carrier Member

Dallas, Texas
June 19, 1968