

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 B&B Foreman C. C. Smith and Bridge and Building Department Mechanic J. J. Jennings, Track Foremen N. D. Chancellor and E. B. Foster, Track Laborers D. D. Paul and J. E. Autrey and failed to call Bridge and Building Lead Mechanic J. H. Moore, Bridge and Building Mechanics J. D. Hewitt and D. L. Deavers to perform overtime service from 2:00 P.M., Sunday, April 4, 1965, at Bridge No. 93.2. (System File 400-204/2579)

2. Lead Bridge and Building Mechanic J. H. Moore, Bridge and Building Mechanics J. D. Hewitt and D. L. Deavers be allowed 5 hours and 45 minutes pay at their respective time and one-half rate because of the violation referred to in Part 1 of this claim.

OPINION OF BOARD: The claim here arose out of replacement of bridge ties damaged by the derailment of a freight car, the same situation which was involved in Docket No. 12. The Organization contends that the work of replacing the ties belonged to the Bridge and Building Mechanics and should have been assigned to claimants who were then regular members of a Bridge and Building gang on Seniority District No. 5. It asserts that by having this work performed by track laborers under the supervision of a Bridge and Building Foreman Carrier violated the Agreement. It relies upon Article 3, Rules 1 and 14 (Seniority Rules) as well as the Scope Rule (Rule 1) and Article 11, Section 2 (f).

The Carrier defends the claim on three grounds: (1) The work in question was emergency work and none of the rules relied upon by the Organization are applicable; (2) The work involved was not the exclusive work of Bridge and Building

employees; thus neither the seniority or other rules require Carrier to assign it to the Bridge and Building employees; (3) None of the persons on whose behalf the claim was made were available to perform the work.

About midnight on April 3, 1965, an east bound freight train enroute from Rotan to Bellmead derailed a car near MP 94. A car was dragged some distance eastward and over a bridge near MP 93.2 damaging some of the ties on the bridge. It was rerailed and the train proceeded to Bellmead, arriving there about 6:30 A.M. at which time the crew reported the derailment. Two Section Foremen were called and proceeded to the scene of the derailment to make necessary repairs to the track. When it was learned that some ties on the bridge were damaged and would have to be replaced and the bridge inspected by a Bridge and Building Foreman to pronounce it safe for trains, the Division Engineer called Bridge and Building Foreman Smith at Temple, Texas and told him to proceed to the bridge, taking a Bridge and Building mechanic with him. Smith could not locate such a mechanic in Temple, but on his way to the scene he stopped at Gatesville and picked up Bridge and Building Mechanic L. L. Jennings. They proceeded to the bridge where Jennings and members of the sections gangs replaced the damaged ties.

We look first at Carrier's contention that this was emergency work. Awards of the Third Division have repeatedly held that where an actual emergency arises Carrier is not held to the strict provisions of the Agreement but may use available resources and manpower in order to restore service. The Organization does not seriously contest this well established principle; but contends that the damaged bridge did not constitute an emergency. As evidence of the emergency Carrier points to the fact that a train was called out of Bellmead (Waco) for 5:45 P.M. April 4th due to operate over the bridge involved some two hours later; that ties on the bridge were damaged and had to be replaced before the train could proceed; that Carrier called workmen on their rest days and paid them on an overtime

basis to get the track repaired in time for the train. The Organization argues that no emergency existed since the bridge was on a branch rather than the main line, and traffic was not interrupted or delayed. It says that Carrier did not consider it an emergency as shown by the fact that although it was aware of the derailment at 6:30 A.M., it did not call Foreman Smith until 2 P.M. These arguments are not convincing. The main line-branch line distinction is not valid. A train was scheduled and would have been delayed for a substantial period had Carrier waited until Monday to make the necessary repairs. As to the delay from 6:30 A.M. to 2 P.M. in calling Smith this is explained by the fact that the Chief Engineer was not aware of the damage on the bridge until the Section Foremen had arrived on the scene. Under the circumstances existing we are of the opinion that the derailment and consequent damage to the track on the bridge constituted an emergency freeing Carrier to use available personnel to perform the repair work in the shortest possible time.

But even if the existing situation on Sunday, April 4th, could not be considered an emergency we are of the view that Carrier's assignment of the work in question did not violate the Scope or Seniority Rules or any other rules of the Agreement. All of the work performed at the bridge was on the ties; none of it was on the bridge structure itself. To establish any right to the work involved it is necessary for claimants to prove that the work of replacing ties on a bridge is the exclusive work of the Bridge and Building Mechanics classification. This they have not done and cannot do. Awards of the Third Division, in disputes from this property, make clear beyond any doubt that work performed on a track on a bridge is not the exclusive work of the Bridge and Building Mechanics. Award 5870 (pouring a filler into cracks in ties on a bridge); Award 6151 (pulling spikes and respiking rails on a bridge); and Award 12098 (installation of an entire bridge deck). Award 5870 clearly distinguishes work in connection with the maintenance and repair of the

bridge structure itself from work in connection with the track which the bridge supports, which is the work involved in the present case.

In view of our conclusion that Claimants have failed to establish any right to the assignments in question we find it unnecessary to consider the arguments concerning the availability of the Claimants for assignment to the work of replacing the ties.

For the reasons expressed we find that Carrier did not violate the Agreement by the assignment of the work involved.

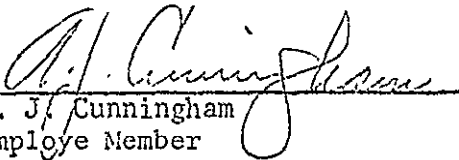
AWARD

The claim is denied.

Public Law Board No. 76



Roy R. Ray
Neutral Member and Chairman



A. J. Cunningham
Employee Member



Fred R. Carroll
Carrier Member

Dallas, Texas
December 12, 1968