Award No. 14
Docket No. 14

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 Agreement when it called and used Track Laborer Pedro Garcia to Assist Bridge and Building gang on Saturday, April 24, 1965 in repairing Bridge No. 888.7 and compensated him at Track Laborer's rate of pay.

2. Track Laborer Pedro Garcia be compensated at Bridge and Building Mechanic's time and one-half rate of pay instead of the Track Laborer's time and one-half rate of pay which he received.

OPINION OF THE BOARD: The issue presented by this claim is whether claimant, a track laborer, should have the Bridge and Building Mechanics rate of pay for the overtime work he performed on Saturday, April 24, 1965. On that evening Bridge 888.7 on Carrier's main line some 8.7 miles south of Temple, Texas was damaged by fire. The Division Engineer instructed Bridge and Building Foreman Smith, who resided at Temple, to go to the bridge and make the necessary repairs to restore it promptly to service. Smith took with him Section Foreman Russell and Track Laborer Pedro Garcia (the present claimant). Upon arrival they found that the only damage was three burned bridge ties. They replaced the ties with crossties which they had with them. These crossties which were used as a temporary measure were later removed and replaced with bridge ties by Bridge and Building gang. Claimant was paid for his overtime work at time and a half the

Track Labor rate.

The Organization contends that the work involved was Bridge and Building Mechanics work because it has been historically performed by Bridge and Building Department employees; and that claimant should have been paid the Bridge and Building Mechanics rate. It relies upon the Scope Rule (Article 1, Rules 1, 2, 3); Article 5, Rule 11, which states that laborers shall not be used to perform work generally recognized as Bridge and Building work; and Article 16, Rule 1.

Carrier takes the position that: (1) The rules relied upon by the Organization do not support the claim; (2) An emergency existed and the Carrier was entitled to use any employees immediately available to restore the bridge to service; (3) The work performed was not the exclusive work of Bridge and Building Mechanics.

We turn first to the emergency argument. As we said in Award No. 13, we recognize the principle that where an emergency exists and prompt action is required to restore a track to service the Carrier may use personnel immediately available. The bridge involved here was on Carrier's main line and a northbound freight train was standing just south of this bridge awaiting completion of repairs so it could proceed to Waco. We are satisfied that an emergency existed justifying Carrier in having the work performed as it did.

However, even if it be conceded that no emergency existed the claim is, nevertheless, lacking in merit. Claimant can establish a right to the higher Bridge and Building rate only by showing that he performed work belonging to the Bridge and Building classification. This he has not done. The Scope Rule is general in character and a dozen or more Awards of the

Third Division involving disputes on this property have held that a Scope Rule such as we have here does not of itself grant to any employee an exclusive right to the performance of any work. Among the more recent Awards are: 11477, 12098, 12236, 12425, 14313, 14687, 14908, 15185 and 15335. The Organization makes the bland assertion that the work of replacing ties on a bridge is recognized throughout the railroad industry as belonging to Bridge and Building Department Employees. It presented no evidence to this effect and cited no authority to support the statement. Awards of the Third Division in disputes on this property are clearly to the contrary. Awards 5870, 6151, 12098. These Awards leave no doubt that work performed on a track on a bridge is not the exclusive work of the Bridge and Building Mechanics. We have already adopted this view in Award No. 13 of this Board.

The Organization's reliance upon Article 16, Rule 1 (Composite Service Rule) is misguided. That rule has no application to the situation involved here. By its express and unambiguous terms it applies only in situations where an employee works on more than one class of work on any day. In such situations he is to be paid at the rate applicable to the character of work preponderating. In our case there was only one class of work performed and the dispute is as to the rate to be paid for it. The Third Division has consistently held that where a higher rate of pay is sought under Article 16, Rule 1 the claimant must establish that the dominant character of the work performed was that of a higher rated classification. See especially Award 14687 denying the claim of a Section Foreman and five Section Laborers for the Bridge and Building Mechanics rate of pay for time worked in replacing the deck of a bridge damaged by fire. Other Awards include: 5869, 5870, 6151 and 12398. We have already stated above that the work involved here does not belong exclusively to the Bridge and Building Mechanics; therefore the Carrier is not required to pay that rate.

Article 5, Rule 11 does not support the present claim. That rule provides that Laborers will not be attached to Bridge and Building Gangs, nor shall Laborers be used to perform work generally recognized as Bridge and Building work. Before that rule applies it is necessary for the Organization to show that the work performed is Bridge and Building Mechanics work. We have already ruled above, in line with Third Division Awards, that work on the track even that portion on a bridge is not exclusively Bridge and Building work. Article 5, Rule 11 is therefore not applicable to this case.

For all the reasons expressed above we find that claimant Garcia was not entitled to be paid the Bridge and Building rate for the work performed on April 24, 1965 and that the Carrier did not violate the Agreement.

A W A R D

The claim is denied.

Public Law Board No. 76

Roy R. Ray
Neutral Mamber and Chairman

A. J. Cunningham
Employe Member

F. R. Carroll
Carrier Member

Dallas, Texas
December 12, 1968