

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, Track Foreman Terry E. Russell and Track Laborer Pedro Garcia, and failed to call Bridge and Building Lead Mechanic J. H. Moore and Bridge and Building Mechanic J. D. Hewitt to perform overtime services from 8:15 P.M. to 11:59 P.M., Saturday, April 24, 1965 at Bridge 888.7.
2. Lead Bridge and Building Mechanic J. H. Moore, Bridge and Building Mechanic J.D. Hewitt be allowed 3 hours and 44 minutes 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 the replacement of three bridge ties damaged by fire, the same fact situation which was involved in Docket No. 14. On Saturday evening, April 24, 1965, Bridge 888.7, located on Carrier's Main Line approximately 8.7 miles south of Temple, Texas, was damaged by fire. The Division Engineer instructed Bridge and Building Foreman C. C. 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 Terry E. Russell and Track Laborer Pedro Garcia. Upon

- 2 -

arrival they found that the only damage was three burned bridge ties. They replaced the ties with crossties which were on the truck Smith had used to drive to the bridge. These ties were used as a temporary measure and were later removed and replaced with bridge ties by the Bridge and Building gang. No damage was done to the bridge structure and no work was performed on the bridge itself. A claim was filed on behalf of Lead Bridge and Building Mechanic J. H. Moore and Bridge and Building Mechanic J. D. Hewitt for three hours and forty-four minutes at the overtime rate because they were not called to perform the work.

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 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. The Organization relies upon the Scope Rule (Article 1, Rules 1, 2 and 3); Seniority Rules (Article 3, Rules 1 and 14) and Article 5, Rule 11 (which states that laborers shall not be used to perform work generally recognized as Bridge and Building work).

The Carrier defends the claim on several grounds: (1) The work in question was emergency work and none of the rules relied upon by the Organization are applicable; (2) The work for which claim is made was not the exclusive work of Bridge and Building Mechanics, thus neither the Seniority

- 3 -

or other rules require Carrier to assign it to the Bridge and Building employees. (3) Neither of the persons on whose behalf the claim was made was available to perform the work without unreasonably delaying the work. (4) Bridge and Building employees were not deprived of any work since the cross-ties were later replaced with bridge ties by the men who are claimants here.

We will consider first Carrier's contention that this is 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 personnel immediately available in order to restore service. We have recognized this principle in Awards 13 and 14 of this Board. The Organization does not seriously contest the principle but contends that the damaged ties did not constitute an emergency. We do not agree. The bridge involved here was on Carrier's main line between Houston and Waco. Since this is single track territory when the bridge became impassable trains could not be operated between these two points. At the time the Division Engineer called Foreman Smith a northbound freight train was standing just south of this bridge awaiting completion of repairs so it could proceed to Waco. We have no doubt that an emergency existed justifying Carrier in having the work performed as it did.

But even if the situation existing on April 24th could not be considered an emergency we are of the view that Carrier's assignment of the work in question did not violate any of the rules of the Agreement. All of the work

- 4 -

performed at the bridge was on the ties; none of it was on the bridge structure itself. Before claimants can establish any right to the work involved they must prove that replacing ties on a bridge is the exclusive work of the Bridge and Building classification. This they are unable to 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 Bridge and Building Mechanics. Award 5870 (pouring filler into cracks in ties on a bridge); Award 6151 (pulling spikes and respiking rails on a bridge); 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, i. e. the work involved in the present case. We have already adopted this view in Award 13 of this Board. With reference to the alleged violation of the Seniority rules a quotation from Award 12098 disposes of this contention:

Before employees and Organization can show that Carrier violated the seniority rights of the Bridge and Building Department Employees in the Division gang on the old South Texas District, they must show that the Carrier had work which was contracted exclusively to the employees holding seniority on the territory in question performed by other employees or persons. This they have not done and cannot do.

Article 5, Rule 11, relied upon by the Organization 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

- 5 -

it must be shown that the work performed is Bridge and Building Mechanics work. We have 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.

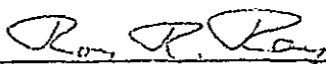
In view of our conclusion that claimants have failed to establish any right to the work in question we find it unnecessary to consider the argument concerning the availability of the Claimants for assignment to the work of replacing the ties.

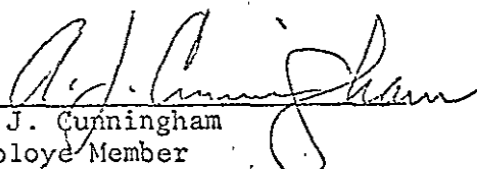
For the reasons expressed we find that Carrier did not violate the Agreement by the assignment of the work involved.

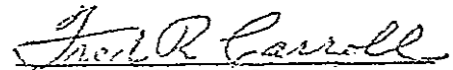
AWARD

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
May 16, 1969