

(R-53-577-1)

AWARD NO. 11

CASE NO. 11

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES : The Brotherhood of Maintenance of Way Employees
TO :
DISPUTE : St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"Claim favor W. M. Beechley for difference between section laborer's rate and section foreman's rate for an equal number of hours consumed by Assistant Roadmaster checking ties for renewal 1959."

FINDINGS:

The employees state that the carrier violated the effective Agreement by failing to assign furloughed Section Foreman, W. M. Beechley, to the inspecting and checking of cross ties, beginning March, 1958. The carrier assigned Assistant Roadmaster, S. R. Clary, to do this work.

The employees claim that Foreman Beechley be allowed the difference in pay between what he received as a section laborer and what he should have received as a section foreman beginning March 1, 1958, and continuing as long as the violation existed.

The carrier states that prior to March, 1958, cross ties were renewed on a year to year basis and that an inspection was made once each year to determine the number of ties to be renewed the following year; that each roadmaster was charged with the responsibility for determining the number of ties to be renewed on his district, subject to review by higher officers. The standing instructions require the roadmaster to make the necessary inspection of the ties himself, but special instructions were generally issued to require each section foreman in the roadmaster's territory to inspect the ties on his section and report the number of ties to be renewed the following year, and their location according to mile post. The roadmaster then would consolidate the reports from the different sections, making such revisions as he considered advisable, either with or without inspection of the ties himself.

In 1958, the system of renewing ties on a year to year basis was changed and a program inaugurated of tie renewal and general track rehabilitation at longer intervals of approximately once each five years. Mechanized equipment was placed in service to handle the tie renewal, raising, ballasting and surfacing of track. An inventory to determine the tie placement needs for 1958 had been made in June and July, 1957, by section foreman and the roadmaster; this information did not, by any means, meet the needs of the new program because of the longer replacement cycle and because the inspection by the different foremen and roadmasters was not uniform and the general tie condition was not at the same level on the different sections and roadmasters' districts.

Roadmaster Clary was ordered to start the inspection of ties on the southern district, and started this inspection on March 8, 1958, and continued until March 25, 1958, when he completed inspection on the line from Lufkin to Tyler, and when it became necessary to start inspecting the ties on the mainline from Texarkana southward on June 24, 1958, Clary was relieving roadmaster McCoy at Dallas, who was absent due to illness, and bridgeman John Earle, who had long experience in inspecting bridge timber and crossties, was used to inspect ties on the heavy traffic district from Texarkana to Mt. Pleasant (a distance of 61 miles), which was completed on July 25, 1958.

Bridgeman Earle trained track apprentice R. L. Matthews for six days, July 20 to 25, and on reaching Mt. Pleasant, Matthews took over the inspection from Mt. Pleasant to Corsicana (139 miles), which he started July 27th and completed September 3, 1958.

From the evidence produced at the hearing before the Board, it was shown that prior to 1958, crossties were renewed on a year to year basis and an inventory was made once each year by section foreman to determine the number of ties needed to be renewed the following year. This was under the roadmaster's supervision. The carrier in this claim used roadmaster Clary, bridgeman Earle, and track apprentice Matthews to perform this work, stating that their tie renewal program was to cover a greater cycle than a year to year renewal; that they had anticipation of inspecting the ties to cover a renewal program of once in five years. Therefore, it believed that it was not violating any rule of the Agreement when it directed the roadmaster, the bridgeman, and track apprentice employe to perform this work.

Generally speaking, the carrier may not have an employe perform work who does not come within the scope of the collective bargaining Agreement of the employes who have performed this work over a period of years and by past practice the carrier has given to this class of employes the exclusive right to perform this work. There are recognized exceptions to this general rule, which include instances, when the work requires such special skills or special equipment, that this class of employes cannot be expected to have them. However, this Board does not think the work of inspecting ties, whether it be on an annual basis or an inspection to cover a five year period, falls within this exception. In fact, the record establishes that the section foremen are capable of performing this inspection. The Scope Rule of the effective Agreement reads as follows:

"Rule 1 - Scope--These rules will govern the hours of service, working conditions, and rates of pay of all employees in the Maintenance of Way Department as listed in the agreement, and other employees who fill similar positions hereafter established in the Maintenance of Way Department account changes in maintenance work."

The carrier does not deny that section foremen performed this work prior to 1958, nor does the evidence presented by the carrier show that if the section foremen could not have performed this work under direction of their roadmaster.

The Board finds from past practice that the inspection of these ties was the exclusive work of section foremen, under roadmaster supervision and, therefore, the carrier violated the scope rule of this Agreement when it allowed, permitted, and

ordered the roadmaster, the bridgman and a track apprentice employe to perform this work.

The weight of the evidence, as presented by the carrier, was not sufficient to overcome the fact that the work in question had been and is the exclusive work of the section foremen. When the carrier attempted to show that the need for the type of inspection it required after 1958, was highly specialized and could be performed only by a roadmaster or a bridgeman, who had a great knowledge of woods, it failed in its evidence when it showed that a track apprentice was trained by the bridgeman in three days to perform this inspection.

AWARD:

Claim sustained.

(s) Thomas C. Begley

Thomas C. Begley, Chairman

(s) A. J. Cunningham

A. J. Cunningham, Employee Member

(s) M. L. Erwin

M. L. Erwin, Carrier Member

DISSENTING

Dated: May 18, 1960

CARRIER'S DISSENT TO AWARDS 11 AND 13

SPECIAL BOARD OF ADJUSTMENT NO. 280

The schedule agreement does not detail work which employees will perform. There are no provisions in such agreement expressly referring to inspection of ties, and no classification of tie inspector appears in the agreement, and no such position has been worked.

Employees engaged in maintenance of way and structures are governed by code of rules issued by the Carrier entitled "Rules and Regulations for the Maintenance of Way and Structures." The current book of rules was issued September 1, 1947, and contains the following provisions under a section captioned: "Ties":

"390. Inspection for Removal.--A close inspection of each tie shall be made annually by the Roadmaster or Track Supervisor for the purpose of determining renewal requirements for the following year. This inspection shall be completed by September 1st.

"The Roadmaster or Supervisor must have and be thoroughly familiar with current instructions governing such inspection."

The term "Track Supervisor" refers to any officer performing the duties of a roadmaster and does not refer to section or extra gang foremen. When section or extra gang foremen are expressly mentioned in the code of rules they are called "track foremen". This is shown by Regulation 392, reading:

"392. Renewals.--Roadmasters and track foremen must familiarize themselves with existing regulations and special instructions governing tie renewals.

"Tie renewal work should be carried out on the basis of disturbing the track from a tie renewal standpoint not more often than once each 12 months. However, preference must be given at all times to prompt renewal of ties that break or fail.

"When renewing ties, the old tie bed and adjacent ties should be disturbed as little as possible, and a dating nail applied to each new tie on the date of renewal."

Under the section captioned "Track Foremen" the following provisions relating to inspecting and patrolling track appear:

"243. Inspection of Section.--They shall pass over their entire sections, or arrange for a competent man to do so, as often as conditions require, and during such inspections they must observe particularly the condition of the main track, switches, sidings, cattle guards, bridges, culverts, crossings, farm gates, fences, rail lubricators, and wire lines. When a turnout is inspected each part must be carefully examined to see that points fit

properly, guard rails are in proper position, gage is correct, all bolts are tight, and cotter keys in place. (See Rules 346, 347 and 348.)"

"244. Watching in Bad Weather, Patrolling Track.--During storms, high winds, heavy rainfall, or high water which may affect safety of operation or damage Company property, foremen and track men must be on duty, whether day or night, and at such times they must carefully patrol their entire sections, taking stop signals prescribed in Rule 35 with them.

"Foremen must see that reliable watchmen are property detailed to patrol the track, watch bridges, or perform other duties when necessary for the safety of track and structures, and shall frequently visit these men at such intervals, day or night as may be necessary to see that their duties are faithfully performed and to make personal examination of conditions to insure the safety of trains.

"Upon arrival at the end of their section, if it appears probable that the adjoining sections may have been damaged, they will continue as far as considered necessary to insure safety to trains, or until the Foreman of that section is met.

"They will communicate promptly with the Train Dispatcher, when practicable, as to direction of approaching trains, and keep the Dispatcher informed from each available point of communication as to their movements and conditions during and after their patrol."

"245. Equipment of Track Walkers.--Track walkers shall carry flagging equipment (See Rule 35), spikes, bolts, and such tools as are likely to be needed."

No express mention is made in the section captioned "Track Foremen" of such foremen inspecting ties in connection with determining tie renewals.

Under these long-standing instructions section foremen have inspected ties for planned renewal only if and when instructed to do so. When it was desired that section foremen do such work letters were issued to the section foremen instructing them when to make such inspections on their particular sections. The roadmasters made such personal inspections as they considered warranted, frequently rechecking when the tie allowance would not permit replacement of the number of ties section foremen had indicated should be renewed.

In 1958 when a program of renewal on a five year instead of an annual basis was inaugurated, the inspection by sections was no longer practicable. A uniform inspection to entirely new standards was required. An assistant roadmaster was used to make this inspection. Later a bridgeman trained in timber inspection was

used for a short time in the absence of the assistant roadmaster, and still later a track apprentice was trained and used in the work.

The Findings of the majority in Awards 11 and 13 state that:

"* * from past practice that the inspection of these ties was the exclusive work of section foremen, under roadmaster supervision * *."

and that:

"The weight of the evidence, as presented by the Carrier, was not sufficient to overcome the fact that the work in question had been and is the exclusive work of the section foremen."

Instead of the record showing that section foremen have had exclusive right to inspect ties, the facts pointed out show that such inspection of ties as section foremen have handled has been at the discretion of the Carrier. That fact was constantly before the section foremen in the long standing instructions contained in the book of rules, and in the fact that roadmasters frequently checked ties, and checked any other condition on their territory which they considered warranted their personal attention as to prospective renewal of material.

Consequently I must dissent to the Findings that section foremen had established exclusive right to inspect ties and had right to the work covered in this claim.

In this connection, it is noted in last paragraph of Findings, statement was made that the track apprentice was trained by the bridgeman in three days. The track apprentice received training from the bridgeman for six days, as shown in third paragraph, page 2.

(s) M. L. Erwin

M. L. Erwin, Carrier Member