

Award No. 532
Docket No. MW-537

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES**

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of E. A. Courtney, Extra Gang Foreman, Missouri Pacific Railroad, for Steel Gang Foreman's rate of \$150 per month for the last half of October and the first half of November, 1936, for Steel Gang Foreman's work performed by him on the Illinois Division and for which he was paid at the rate of Extra Gang Foreman, namely, \$145."

STATEMENT OF FACTS: The employes submit the following statement of facts:

"During the month of October and November, 1936, this foreman was required, while working on the Illinois Division of the Missouri Pacific Railroad, to lay some mine tracks, approximately 6,000 track feet, and in connection with that work he was required to cut the main line track and put in six (6) main line switches. The carrier allowed his payroll to go through at \$150 per month and he was so paid the schedule rate of \$150. Later, the carrier alleged that it was allowed in error and they deducted it from his subsequent earnings."

The carrier submits the facts as follows:

"During the month of October-November, 1936, extra gang in charge of Foreman Courtney was assigned to build storage tracks and a part of main lead, total 8,000 feet, to serve strip mine in the vicinity of Steeleville, Ill.

"Mr. Courtney is regularly assigned as extra gang foreman on our Illinois Division."

POSITION OF EMPLOYES: "The Carrier herein and the employes on January 1, 1928, entered into an agreement covering rules, working conditions, and rates of pay. However, a supplement was approved May 6, 1926, and made a part thereof, covering rates of pay of various employes and was maintained in that supplement.

"The first paragraph of that supplement reads: 'It is hereby agreed that the rates of pay herein established shall become effective May 1, 1926,' Paragraph eight (8) of that supplement reads:

Extra Gang Foreman.

Increase of \$15 per month establishing a basic rate of \$145 per month (\$5 per month differential for steel gang foremen to be maintained).

"The Employes contend that the agreement is perfectly clear, and that it states very clearly 'STEEL GANG FOREMAN' and not Foreman changing rail.

"In the many contentions of the representatives of the Carrier they claim the rate was for the purpose and intent of compensating a man of unusual or outstanding ability when changing rail from a light to a heavier weight. The Agreement does not so state, in fact the language of the particular clause is such that it is applicable to any rail laying job, whether new track or relaying.

"In conclusion we wish to draw the attention of the Honorable Board to letter written by Mr. R. E. Vermillion, Roadmaster, to Mr. V. C. Halpin, Division Engineer, in which Mr. Vermillion states: 'If there is a different rate that applies, he is entitled to it.' The Board can readily see that Mr. Vermillion, Roadmaster, felt that if there was a higher rate for Steel Gang Foreman that Mr. Courtney should have been paid the higher rate."

POSITION OF CARRIER: "Effective December 1, 1924, agreement negotiated with the Maintenance of Way Employes provided:

'Uniform rate of \$130 per month shall be established on all divisions of Missouri Pacific Railroad for extra gang foremen excluding fence gang foremen.'

'Uniform rate of \$135 per month shall be established on all divisions of Missouri Pacific Railroad for steel gang foremen.'

"This agreement established a \$5 differential rate for foremen exclusively assigned to the laying of steel and the differential has continued to date, the present rates for extra gang foremen being \$145 per month and steel gang foremen \$150 per month.

"The purpose and intent of this agreement was to apply the higher rate to foremen of gangs assigned exclusively to the laying of steel and not to such extra gangs as may, during the course of their ordinary work, replace rail or lay new rail on minor extensions such as was involved in this particular case.

"In 1926 the employes contended that the differential should be applied to a section foreman who augmented his gang by the employment of additional help to lay 1½ miles of 100 lb. steel on a certain section. This claim was appealed by the employes to the then existing 'System Board of Adjustment,' which provided for equal representation, four members of the Board representing the employes and four the carrier. The Board denied the employes' claim in this instance, sustaining the carrier's contention that the \$5 differential rate over and above the regular extra gang foreman's rate was applicable only to foremen in charge of steel laying gangs."

OPINION OF BOARD: This claim of E. A. Courtney is for the Steel Gang Foreman's rate of pay of \$150 per month for the last half of October and the first half of November, 1936, and during which period claimant was paid by the carrier at the rate of Extra Gang Foreman, or \$145 per month.

The carrier submits that according to statement made at the hearing before this Board, and which supplements the details given in the record, Foreman Courtney, who was employed by the carrier as an Extra Gang Foreman at a rate of \$145 per month, was assigned to work on what was termed the new mine track in the vicinity of Steeleville, Ill., during July, 1936, and finished the work in December, 1936. The carrier further submits that the work consisted of the usual grading, ballasting, cross and switch tie placement, rail laying, and switch installation involved in new track construction.

No question has arisen as to the application of the rate of \$145 per month established under the rules of the agreement between the parties for Extra Gang Foremen. However, the claim is made and substantiated that following the grading, ballasting, and laying of ties, etc., the period during the last half of October and the first half of November was consumed in the laying of steel or rails, and switch installation.

The employees contend that during that period when the gang was exclusively employed in laying rails, Mr. Courtney was entitled to a rate of \$150 per month established under the rules of the agreement for Steel Gang Foremen, instead of the rate of \$145 per month which he was paid under the classification of an Extra Gang Foreman, and cite Paragraph (a) of Rule 28 of the existing agreement entitled "Composite Service," in support of their contention.

The rules of the agreement are silent as to what constitutes an Extra Gang Foreman and what constitutes a Steel Gang Foreman. If the fact of laying rail or steel and switches is all the requirement necessary to establish the payment of the higher rate, then this employee is entitled under the rules of the agreement to the classification of Steel Gang Foreman during that period of the time he was employed solely in laying steel.

The question of past practice on which the employees state the carrier relies to support its claim is not an issue in this case; but if the case is to be properly decided some factor must determine what a steel gang is if, as stated by the employees, it is not for this Division to decide.

Undoubtedly in the opinion of the Board a more experienced or higher class of knowledge or service was required of a Steel Gang Foreman than of an Extra Gang Foreman, and this is indicated by the differential in the rates. Whether, however, the proper definition of a Steel Gang Foreman is to cover a foreman in charge of relaying rail and switches, and not in constructing new tracks, as stated by the carrier, or whether the fact of laying new tracks and switches of new material, or the laying of steel or tracks of any character, as stated by the employees, is to determine the qualifications and experience as well as the rate of a Steel Gang Foreman, the Board is unable to determine from the evidence submitted.

The employee, Mr. Courtney, states that he laid new track and thirteen switches during the period indicated. Six of these thirteen switches were said to be main track switches, all being new material and which may or may not indicate that at least a portion of the work, if not all of it, required unusual qualifications in the Foreman. As stated, however, the Board is unable to determine the question in dispute from the evidence submitted, and is compelled to remand the claim for conference and agreement between the parties as to the character of work which shall determine the proper classification of each of the positions designated in this dispute, and, in the event that the parties cannot agree on the proper classification of the work involved in this claim, that the matter be resubmitted to the Board with such additional facts as may be secured through a conference of the parties.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim be remanded to the parties for conference and agreement between the parties as to the character of work which shall determine the

proper classification of each of the positions designated, with privilege of resubmitting the issue involved in the event that the parties fail to reach an agreement.

AWARD

Claim remanded to the parties in accordance with last paragraph of the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 15th day of November, 1937.