

Award No. 2825
Docket No. MW-2853

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE & HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Pietro Maddalone and Percy Palmater be allowed the difference in pay between what they did receive at the Section Foreman's rate of \$180.80 per month and what they should have received at the Extra Gang Foreman's rate of \$210.80 per month for the following dates:

Pietro Maddalone	May 7, 1942, to May 17, 1942
Percy Palmater	May 18, 1942, to January 15, 1943.

EMPLOYEES' STATEMENT OF FACTS: Under date of May 1, 1942 Division Engineer R. S. Gutelius issued Bulletin No. 121 advertising for position of track foreman, Susquehanna Division, reading:

**"THE DELAWARE AND HUDSON RAILROAD
CORPORATION**

BULLETIN NO. 121

ADVERTISING POSITION
Oneonta, N. Y.
May 1, 1942

TO ALL CONCERNED:

Applications will be received up to and including May 11, 1942 for the following position:

Title:	Foreman
Headquarters:	Oneonta, N. Y.
Rate of Pay:	\$180.80 per month
Assigned Territory:	Oneonta Yard
Permanent or Temporary:	Temporary

Successful bidder must satisfy the undersigned that he has the physical, mental and educational qualifications for the position. He must reside at a location accessible to headquarters and satisfactory to the undersigned.

R. S. Gutelius
Division Engineer"

Under date of May 13, 1942 the Division Engineer issued Bulletin No. 114 making assignment on the position advertised in Bulletin No. 121, reading:

railroad are usually large gangs and used principally on large projects where special skill is required. It is not uncommon for several section gangs to be bunched with the extra track gang and at such times the Extra Gang Foreman is in charge of and responsible for all of the gangs.

The gang concerned in the case at issue was created for the purpose of unloading coal. In performing this work, after the coal was dumped from hopper cars on the track, the track was crudely raised in order to increase the height of the coal storage pile and the process repeated. The tracks were used for no other purpose. The work involved would normally be classed as that of laborers.

Rates of pay in effect for Section Foremen on the Susquehanna Division range from \$170.80 to \$200.80 per month. There are two positions at \$170.80; 23 at \$180.80; 3 at \$185.80; and 4 at \$200.80. The Carrier feels that rate of \$180.80 for the Foreman of the gang in question was properly based on the work performed.

Extra Gang Foremen on this railroad are required to perform all classes of track work, such as stone ballast, laying new rail, installing switches and other forms of track maintenance and construction. This is the type of work for which the Extra Gang Foremen are paid a higher rate of pay than Regular Section Foremen. The position of Foreman in this case, when unloading coal, only called for the actual supervision of the unloading operation and raising of track. When this gang was working with section gangs D-10 and D-11, they worked along with and under the general direction of the Regular Section Foremen of these gangs. When laying rail, this gang was working with the extra gang and several section gangs and the Foremen of such section gangs in most instances were receiving the same rate of pay as the Foreman involved in the case at issue. From November 14, 1942 to January 14, 1943 the gang was working on the cinder dump, performing work not nearly as important as required of extra track gangs, or even those of a section gang.

While the main point the Carrier desires to establish is that the gang in question was not hired to, nor did it, perform the duties ordinarily expected of an extra track gang, the Carrier also feels that the duties required were comparable to those of a regular section gang. In establishing the predominating Section Foreman's rate on the Division as the rate of pay on this new Foreman's position, the Carrier feels such Foreman has been properly compensated for the duties required.

OPINION OF BOARD: On May 1, 1942, the Carrier issued a bulletin for a temporary Foreman at its Oneonta (N. Y.) Yard. During the advertising period, from May 7 to 17, the position was occupied by the Claimant Maddalone; thereafter, until January 15, 1943, by the Claimant Palmater. The position was described in the bulletin only as above indicated, and was rated at \$180.80 per month. Claimants say that this was the rate applicable to Section Foremen and that they should have been compensated at the Extra Gang Foreman's rate of \$210.80 per month. The claim is for the difference.

A Schedule, effective July 1, 1939, lists different minimum rates for Section Foremen and Extra Gang Foremen. There were two Section Foremen with headquarters at Oneonta during the period in controversy. These Foremen were in charge of gangs that were regularly engaged in the maintenance of specific trackage and property in the Oneonta Yard. The gang in charge of the Claimants devoted from 35% to 50% of their time to assisting said regular gangs and the remainder to unloading coal and wasting cinders.

Nowhere in the Agreement are Section Foremen and Extra Gang Foremen distinguished, but that there is a substantial difference in their respective duties is indicated by the fact that they are rated differently, the pay of Extra Gang Foremen being substantially higher. The question with which we are here dealing, therefore, resolves itself into one of fact, to be considered in the light of the scheduled rate differential.

We think it is a matter of common knowledge in railroad circles, if, indeed, it does not so appear in the record before us, that regular section gangs and their foremen-in-charge usually work in a definite territory, more or less local or limited in scope, but that extra gangs are frequently used at remote points on the division and away from the homes of the members and the foreman thereof. These facts, coupled with the further circumstance that positions as Extra Gang Foremen are likely to be less permanent than those attached to regular gangs would logically justify a higher rate of pay for the former.

Considering all of these elements together, we are inclined to the view that these Claimants were in service as Extra Gang Foremen, rather than Section Foremen. We regard the facts that the assignments were temporary and that no particular territory or property was set over to the Claimants for maintenance purposes as of peculiar significance. In other words, the employment would appear to fall more naturally and logically into the category of that pertaining to a foreman of an extra gang than to that of a regular section crew.

The Carrier might, in a measure, have avoided this controversy, or at least supported its theory, if it had described the position in its bulletin in accordance with the terms used in the effective wage schedule, although we are well aware that it has many times been declared that a matter of classification is to be determined by the character of the work performed, rather than by the title ascribed to it. See Awards 2007 and 2138. Here, however, the Carrier used a designation that does not appear in the applicable schedule. This was calculated to becloud rather than to simplify the issue, but we would not be understood as intimating that this was done for the purpose of rendering the classification uncertain. Controversies, such as this, ought to be reconciled on the property, the parties being in a better position to determine the specific duties and responsibilities attaching to a position than this Board is able to do from the consideration of a record. See Award 1519.

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 the Employee involved in this dispute are respectively carrier and employee 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of February, 1945.