Award No. 5363

Docket No. MW-5322

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MAINE CENTRAL RAILROAD COMPANY

PORTLAND TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the agreement when it required Section Laborer Raymond H. James to perform Section Foreman's duties during the period November 10 to November 23, 1949, inclusive, and failed to compensate him at the Section Foreman's rate of pay;

(2) That Raymond H. James be paid the difference between what he received at the section laborer's rate of pay and what he should have received at the section foreman's rate of pay during the time referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Raymond H. James is regularly employed as a Trackman on Section No. 81, Brewer Jct., Maine.

During the period November 10 to November 23, both dates inclusive, 1949, Foreman Tate, the regular foreman on Section No. 81 was on vacation.

Prior to going on vacation Foreman Tate instructed Trackman James that he was to inspect track, cut brush, perform ditching work, etc.

From November 10 to 23, Trackman James directed the work of Trackman Batchelder, the other member of the crew and, in addition, received instructions from Track Supervisor B. B. Whitney.

On December 3, 1949, the General Chairman requested the Supervisor, B. B. Whitney, to pay Trackman James the difference between the trackman's rate and the foreman's rate of pay for the 10 day period, November 10 to 23, both dates inclusive, and request was declined.

The agreement in effect between the two parties to this dispute, dated May 28, 1942, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: On November 25, 1949, Trackman Raymond H. James addressed the following letters to General Chairman M. T. Simmons:

This claim should be DENIED and the Carrier respectfully so requests.

OPINION OF BOARD: Claim is here made that Carrier violated Rule 33 (a) of the Schedule in that Petitioner performed a higher class of work.

Before deciding whether the facts as we find them warrant an affirmative finding, we deem it helpful to point out that one who performs tasks outside his job description does so either as a volunteer or by direction from someone who has real or apparent authority to issue such direction.

We will first inquire into what various people assert with reference to Petitioner being delegated authority to issue an order. The immediate superior in rank of Petitioner in writing made what is practically a categorical denial of granting such authority to Petitioner. Petitioner's colleague in writing stated he accepted one (1) order from Petitioner which he knew originated with someone other than Petitioner. This same individual further stated in writing, with respect to the work detail outlined by his superior in rank, he received from his colleague no further orders. Whether he received and accepted orders, outside the above mentioned work detail, from Petitioner we cannot determine from the state of the record herein.

In regard to the single order hereinabove referred to, there is no contention the same involved the use of discretion on the part of Petitioner or that the issuing authority acted as it did for any purpose except that of convenience. Consequently such instance is not controlling.

We find nothing in the directions given by Petitioner's superior in rank to indicate the same included functions not within his job description or that the same included the authority or discretion to direct his associate in the manner said functions were to be performed.

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 Employe involved in this dispute are respectively Carrier and Employe 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 Schedule was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of May, 1951.