

Award No. 5945
Docket No. MW-5821

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) That the Carrier violated the agreement when it assigned Milo Neutts, a Trackman regularly assigned to Section A-10 to perform work on Section A-3 subsequent to February 20, 1950, while a Trackman having seniority on Section A-3 was absent from duty by reason of being furloughed;

(2) That the Carrier violated the agreement when it did not assign the senior Trackman working on Section A-10 to perform work which necessitated service in excess of eight (8) hours per day subsequent to February 20, 1950;

(3) That the senior Trackman having seniority on Section A-3 who was absent from duty by reason of furlough subsequent to February 20, 1950, be allowed pay for eight (8) hours each day that Trackman Milo Neutts performed work on Section A-3;

(4) That the senior Trackman assigned to Section A-10 subsequent to February 20, 1950, be allowed pay for the same number of hours in excess of eight (8) hours per day as was allowed Trackman Milo Neutts by reason of his being assigned to perform work on Section A-3 subsequent to February 20, 1950.

EMPLOYEES' STATEMENT OF FACTS: Trackman Milo Neutts is regularly assigned to Section A-10.

Subsequent to February 20, 1950, Trackman Neutts was required to work in excess of his regular assigned hours on Section A-3, assisting Engineers on Section A-3 at Laffin.

The work performed consisted of cutting brush, driving stakes, etc., in preparation for a track realignment.

During the period that Trackman Neutts was assigned to overtime work on Section A-3, there were Trackmen holding seniority on Section A-3 who were furloughed by reason of force reduction.

Trackman Neutts was not the senior Trackman assigned to Section A-10.

used to perform this work. In this manner, Trackman Neutts had become familiar with the work of the Engineering Corp and was of considerable assistance to them. An employee who had no previous experience would have been almost useless. The work which Trackman Neutts performed with the Engineering Corp cannot be classified as that which comes under the Scope of Agreement between Carrier and the Brotherhood of Maintenance of Way Employees. This rule is quoted for the convenience of the Board:

Agreement with the Brotherhood of Maintenance of Way Employees. Effective November 15, 1943.

"SCOPE

The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employees in any and all sub-departments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employees, except:

1. Employees above the rank of foreman.
2. Clerical and **ENGINEERING FORCES.** (Emphasis supplied.)
3. Signal, telegraph and telephone employees."

It is the contention that Carrier has the unlimited right to select the employees it desires to work in its engineering forces. The work performed by all employees in that group was the usual laying out of the territory for the realignment of right of way. The duties of Mr. Neutts were those of a field member of the engineering forces, such duties being divorced from the Scope Rule.

Part (4) of claim requests payment of the senior trackman employed on Section A-10 for work performed on Section A-3 by Trackman M. Neutts. This part of claim is inconsistent with the contention of the employees that Trackman Neutts regularly assigned to Section A-10 was improperly assigned to perform service on Section A-3 which alleged fact forms the basis for the claim. In addition, Part (4) of claim is for overtime payment for hours in excess of eight for an employee who performed no service. Carrier does not believe such a claim is justified.

Management affirmatively states that all matters referred to in the foregoing have been discussed with Committee and made part of the particular question in dispute.

OPINION OF BOARD: Here, a claim is made by a senior trackman assigned to Section A-10 because of the fact that a junior trackman from the same section was assigned to assist engineers working on Section A-3. Claim is also made by the senior furloughed trackmen having seniority on Section A-3.

The Carrier asserts that the selection was made because of prior experience and understanding of the work connected with assisting engineers. The record discloses to us that the work was of such nature as to require little, if any, previous experience. The fact that such selection of this same involved employee was made on other occasions without complaint is no bar to a claim at this time. The record does not disclose that the practice had been of such duration or frequency to establish an understanding or pattern of practice.

It has been held many times by our Board that when desirable work is given to a craft or class, even though the craft or class may not be entitled to the work by virtue of an existing agreement or by past practice, that the work should be given on a seniority basis if ability and merit are sufficient.

We are of the opinion that the work, as performed by Trackman Neutts, was not the work of a trackman, but rather was the work as an assistant to an engineering crew. This, of course, means that there is no merit to the claim of the senior furloughed trackman from Section A-3. The mere fact that the work was performed on the A-3 section is not of itself sufficient to give that portion of the claim strength.

The claimant senior trackman should be entitled to pay for the same number of hours in excess of eight hours as was allowed Trackman Neutts during the period in question when Neutts worked with the engineering forces. Such pay should be at the pro rata rate.

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

Part one of claim denied.

Part two of claim sustained.

Part three of claim denied.

Part four of claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummen
Secretary

Dated at Chicago, Illinois, this 19th day of September, 1952.