

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**BOSTON AND MAINE RAILROAD**

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood, that:

(1) The Carrier violated the effective agreement when it assigned an Extra Crew, rather than Section Foreman T. Carney and his crew to install a Frog, on Section No. 3, on Monday, March 7, 1949;

(2) Section Foreman T. Carney and his crew be allowed pay at their respective time and one-half rate for the same number of hours as was consumed by the Extra Crew who were assigned to the above referred to work."

**EMPLOYES' STATEMENT OF FACTS:** Track Foreman T. Carney and Assistant Foreman C. Cullinan, Welder J. J. O'Connell and Trackmen J. Trackmen J. Mercanto, T. Mammola, J. Lepore, D. O'Dea, C. Frazier, M. Reilly and J. Fogarty are assigned to and hold seniority on Section No. 3.

Foreman T. Carney and his crew had a regular assigned work week of Tuesday through Saturday.

On Monday, March 7, 1949, the Carrier assigned the Foreman and the members of Extra Crew No. 1, to perform regular track work on Section No. 3.

The work performed by Extra Crew No. 1, consisted of renewing a frog, and spiking and gauging track at No. 6 Crossover, and at Track No. 7, Yard 8.

Track Foreman Carney and his crew were available and qualified to perform the above referred to work but were not called.

Claim was filed in behalf of the above named employees and claim was declined.

The agreement between the two parties to this dispute dated May 15, 1942 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts. (Reprinted January 2, 1951.)

**POSITION OF EMPLOYES:** Rules 1, 2, 3-A and 5-A of the effective agreement read as follows:

exclusively assigned to said regular extra crew, worked on a regularly scheduled work day within the territorial limits of Section No. 3, said day not being a regularly scheduled work day for said section crew.

There is before the Third Division, at this time, a dispute submitted ex parte by the Employees, party to this dispute, identified by Acting Secretary, Mr. A. I. Tummon, as follows:

"Failure to call Section Foreman J. F. DeLorey and his crew to perform necessary work on their assigned section on August 13, 1949."

The position of Carrier as set forth in Carrier's answer to the aforesaid ex parte submission of the Employees in the quoted dispute, is equally applicable in this dispute. Rather than burden this docket with a repetition of Carrier's entire argument, Carrier's position in the above quoted dispute is hereby made a part of Carrier's position in this dispute.

In addition to the foregoing, there is, in this dispute, the added feature of a special type work not customarily or generally performed by section forces. The work here consisted of renewing frogs in a crossover. This is generally assigned, as special project work, to regular extra crews who move from place to place making whatever renewals are necessary.

The practice of years, under the same rules, should not be lightly overturned

There is no merit in the claim in this docket under the rules or practice and it should be denied.

**OPINION OF BOARD:** This case is concerned with a claim of the System Committee of the Brotherhood on behalf of Section Foreman T. Carney and his crew for pay at penalty rates for certain hours which they were not called to work on Monday, March 7, 1949.

There is no controversy between the parties with respect to the facts involved in the situation giving rise to the claim. The issue posed is identical in almost all respects to that involved in Docket MW-5687 on which Award 5950 is made this day. Thereafter, it is unnecessary to repeat here the discussion in Award 5950 which is equally applicable in the instant case. No showing is made in this record to justify a different decision from that made in the companion case in Award 5950.

Prior Awards 4700 and 5261 of the Division are controlling in this case also, and no showing has been made which would justify a reversal of the conclusion reached in those Awards.

Under these circumstances it is appropriate that the claim be sustained at pro rata rates.

**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 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 Carrier violated the Agreement.

**AWARD**

Claim sustained at pro rata rates.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST: (Sgd.) A. Ivan Tummon  
**Secretary**

Dated at Chicago, Illinois, this 7th day of October 1952.