

Award No. 6398

Docket No. MW-6188

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when they failed to call or assign Bridge and Building Foreman W. F. Clark to supervise the employes in his crew who were used in overtime service on November 25, 26, 28 and 29, 1950;

(2) Bridge and Building Foreman W. F. Clark be paid at his respective time and one-half rate for nine (9) hours on November 25; at his time and one-half rate for twenty-three (23) hours on November 26 and for one (1) hour at his double time rate on November 26; at his time and one-half rate for five (5) hours on November 28; and for five (5) hours at his time and one-half rate for November 29, 1950, because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Bridge and Building Foreman W. F. Clark's assignment on November 24, 1950, was to supervise one Assistant Bridge and Building Foreman, one Carpenter and twelve Laborers who were engaged in installing protective devices to the banks of the Homochitto River, where it flowed under the Carrier's bridge at Rosetta, Mississippi.

Bridge and Building Foreman Clark and his crew were regularly assigned to work eight hours per day, Mondays through Fridays with Saturdays and Sundays being assigned as their regular rest days.

Upon the completion of their regular tour of duty on November 24, 1950, Foreman Clark and his crew had completed their regularly assigned weekly work period and therefore they dispersed to their respective residences to spend the week-end with their families.

On Saturday afternoon, November 25, 1950, a derailment occurred on the Carrier's bridge at Sibley, Louisiana, and Bridge and Building Foreman E. McGee was instructed to proceed with his crew to the point of derailment to assist in rerailing operations and make necessary bridge repairs. Nine laborers who were regularly assigned to Foreman Clark's crew were called and utilized to supplement the crew of Bridge and Building Foreman McGee.

There was no crossing of seniority districts or territories in this case inasmuch as B&B Foremen, carpenters and laborers working from camp cars are not assigned to any particular district, but are worked over the entire Vicksburg Division wherever their services are needed.

The carrier at this point calls the attention of your Board to the fact that there is no rule in the agreement that can be construed to mean a supervisor (foreman) must be called when his services as such are not needed. In this instance the services of Foreman Clark were not needed at Sibley since two foremen and supervisor were at the scene of the derailment, and it was necessary for Foreman Clark to be with the remaining members of his gang to supervise the work being done near Rosetta, Mississippi. The determination of whether additional supervision was needed in this instance was a managerial prerogative since the agreement is silent as to when a foreman will be used.

In connection with this case, the carrier calls the attention of your Board to Third Division Award 2025 which covers a somewhat analogous situation.

In handling this claim on the property, the employes have advanced no rule to support their claim. The reason for that is, there is no rule to support them. However, should the position of the employes be sustained, your Board would go beyond its function of interpreting existing provisions in the agreement between the parties as delegated by the Railway Labor Act, and in effect write a new rule into the agreement. In this connection see First Division Awards 7057 and 14566, Second Division Award 1474, Third Division Awards 389, 871, 1230, 1609, 2612, 2622, 3407, 4763 and 5079, Fourth Division Award 501, and similar holdings in other awards of all four divisions of the National Railroad Adjustment Board which are too numerous to cite here.

There is no basis for the claim, and the carrier respectfully requests it be denied.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant was regularly assigned B&B Foreman, by Carrier, and was engaged with his crew in installing protective measures along a river bank where Carrier's line had a bridge out at Rosetta, Louisiana. Claimant and his crew were regularly assigned Monday through Friday, with rest days Saturday and Sunday. The crew had completed this assignment on November 24, 1950. On Saturday, November 25, 1950, one of the rest days, a derailment occurred on Carrier's lines near Sibley, Louisiana, and Carrier instructed B&B Foreman McGee to proceed to the point of derailment with a crew to make necessary repairs. McGee proceeded with his assignment, his crew being supplemented with nine laborers from the crew of claimant. The crew under McGee, performed overtime service on November 25, 26, 28 and 29th.

It is alleged that Carrier has violated the Agreement by its failure to call the claimant Clark to supervise the work of laborers used from his gang, on the overtime work, and said claimant requests he be allowed pay at the overtime rate for the hours worked by members of his gang, all in violation of the provisions of the Agreement.

Carrier contends it has in no way violated the provisions of the Agreement, but did exercise their right of discretion to determine the number of foremen on the B&B gang necessary to repair the bridge at Sibley, and to prepare the line for restoration of traffic following the derailment. The Organization contends Carrier has violated Rule 38 (g) of the Agreement. This provision covers work required by Carrier to be performed on a day which is not a part of any assignment, etc. There is nothing in record to indicate the necessity for Carrier to require any additional foreman, other than the one used. Nor are we able to find in the Agreement any provision which prohibits Carrier from using members of one B&B gang with another, or where any

requirement is provided that the Foreman shall also be used wherever a portion of his gang may be temporarily assigned. It is not disputed there were several B&B gangs employed by Carrier on the Vicksburg Division, and all were under the jurisdiction and control of the Division Engineer at Vicksburg. The Employees rely on Rule 3 (c) as supporting their contention that the work should have been assigned to claimant. This rule specifically states it concerns System Bridge Gangs, which can in no way be applicable to the claim before us. As we held in Award 4803, the same is applicable here.

"The practice of doubling or intermingling adjacent foremen and their gangs to work on other sections is not inconsistent with this conclusion since it appears that when such doubling or intermingling has occurred, the regular assigned section foreman and their crews were working."

See also Award 2025. We concur with this view, and as applying to the case before us, claimant was not available on the day of the derailment, and on the subsequent days was working on his regularly assigned position with the remainder of his gang.

It is therefore the Opinion of this Board that there being no evidence that Carrier has not complied with the provisions of the Agreement, the claim be denied for reasons above stated.

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

Claim cannot be sustained, since no violation of the Agreement is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 4th day of November, 1953.