

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

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

(1) The Carrier violated the effective agreement by failing to allow Section Foreman T. O. Medlin to supervise the employes in his crew who were used in overtime service on October 19, 20, and 27, 1951;

(2) Section Foreman T. O. Medlin be reimbursed for all wage loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant is a section foreman who has been assigned, in accordance with rules of the effective Agreement, to supervise the work of the track forces assigned to Section 391 and is assigned to a work week of Mondays through Fridays. Saturdays and Sundays are the regularly designated rest days of Section Foreman T. O. Medlin and his crew, these two days of each week being days which are not a part of any assignment for the members of this gang.

A derailment occurred on a neighboring section territory (301) during the early morning hours on Friday, October 19, 1951, which resulted in Section Foreman Medlin's being instructed to call each member of his crew to report for duty at 8:00 A. M. and to thereafter proceed with all available members of his gang to the point of derailment to assist in making necessary track repairs.

Section Foreman Medlin complied with the instructions issued, proceeded to the site of the derailment and thereafter performed the usual and customary work of his position, namely, that of supervising the work of the employes regularly and duly assigned to his supervision, jurisdiction, authority and/or responsibility.

He performed such usual and regular duties until 9:00 P. M., at which time he was instructed by Roadmaster Pitcock to leave three of his regular employes at the point of derailment to continue work, but under the supervision and direction of Foreman Cherry of Section Gang 301, and for the Claimant and the rest of his crew to return to their headquarters, with further

matter of convenience and accommodation by Foreman Medlin to Foreman Cherry.

Regardless of the facts in that respect, however, such service is not time worked or overtime for which additional payment is required under the agreement rules and interpretation thereof, and at no time has the Carrier ever received and authorized the payment of such a claim.

As the evidence of record clearly and definitely shows the Petitioner has not affirmatively established any violation of the controlling agreement or basis for the claims as alleged in the Petitioner's Statement of Claim, the Board is requested to render an award denying them accordingly.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of the Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employees or their fully authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant, a Section Foreman, and his gang of twelve were called to a neighboring section territory to assist the home gang with an emergency situation. After working from 8:00 A.M. to 9:00 P.M. on a Friday, Claimant and nine of his gang were released until the following morning. Three of his gang continued on working under the direction of the Foreman regularly assigned to the section. Subsequent developments necessitated the recall of Claimant and gang at 3:00 A.M. A week following, eight of Claimant gang were recalled to the same section for further work but without Claimant, their Foreman.

Contention is made that Claimant has the right to perform the usual duties of his position whenever and wherever the services of his gang, or part of them, are required. We do not find support for such contention either in the Rules or Awards cited by the Organization.

Inconsistency on the part of this Carrier is claimed in the handling and in argument advanced in a recent case arising upon this property, the subject of Award No. 6659. There a Section Foreman was found at home when he and his gang had been instructed to assist another section gang in unloading pipe. Under the circumstances of that case the Foreman's duty was with his gang. Disciplinary action was upheld after a finding by this Division, acting with a Referee, that the Foreman involved was separated from his men without permission or justification. But that is not to establish a rule that under no circumstances shall a Foreman be separated from his gang. Here the separation was directed by a superior in exercise of Management discretion under entirely different circumstances. The cases bear no semblance to one another.

Neither is this a case such as was before us in Award No. 3822, cited by the Organization. There a Foreman from another section was called for overtime work on Claimant's section in a nonemergency, thus depriving the Claimant of extra work. The claim was properly sustained. But there is no such deprivation of work involved in the instant case. The Claimant was working off a particular territory to which his superior work rights attached. Such rights did not carry over into a foreign section through any provision of the written rules which we have been able to discover.

The facts stated in the record negative any contention that the arrangement made was for the purpose of avoiding overtime payment to Claimant. The record shows that the Wrecker Foreman initially determined that three men from Claimant's gang would sufficiently augment the home section force to handle the work until morning. Later complications necessitated the recall

of Claimant and the balance of his gang. As it was, several of the employes worked continuously for twenty-six hours. Such exercise of discretion in determining the needs of the service does not violate any Rule cited to us by the Organization. Neither do we find any Rule supporting the contention that this Claimant has the right to supervise his gang whenever and wherever the services of his gang, or part of them, are required. What if emergency needs required the apportionment of his gang between two or more section territories, or, the staggering of the work periods to afford rest?

In Award No. 4992 we held that it was "within the province of the Carrier to determine the amount of supervision needed to properly expedite the work. If the Foreman's position is not required and the supervisory duties of the position can be handled by other supervisory officers who are entitled to perform it, we can find no rule of the Agreement prohibiting such handling." We have reasserted this principle in several later Awards.

In a Maintenance of Way case subject of Award 2025, a contention similar to that asserted here was made but rejected by us.

As to the incident occurring the week following, that of calling five of Claimant's crew to complete the work undertaken a week prior, the above applies and governs. Concerning the resultant requirement that he enter time in his time book and show distribution of labor for the five men who worked on the latter date, we find that the same was incidental to his supervisory job and compensated for by his monthly salary.

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 Employes involved in this dispute are respectively Carrier and Employes 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 a violation of the Agreement has not been established.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 25th day of June, 1954.