Award No. 9433

Docket No. MW-8003

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, 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 that:

(1) The Carrier violated the effective Agreement when it failed and refused to allow Trackman Frank Amatuccio a call at Carman's rate of pay for work performed in re-railing cars on March 5, 1954;

(2) Trackman Frank Amatuccio now be paid the difference between what he did receive at trackman's rate of pay and a call under the provisions of the Agreement with the Brotherhood of Railway Carmen of America, account of the violation referred to in part one (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On March 5, 1954, there was a derailment in the Carrier's Yards at Oneonta, New York. Claimant Trackman Frank Amatuccio was called and instructed to assist carmen in re-railing the derailed cars. Trackman Amatuccio performed carman's work from 5:30 A. M. to 6:45 A. M., a total of one (1) hour and fifteen (15) minutes, for which work he was paid at his trackman's rate of pay.

Claim for a call at the carmen's rate of pay was filed and the Carrier has denied the claim.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

EMPLOYES' POSITION: The Employes submit that there is no dispute between the two parties as to the work performed by trackman Amatuccio being work historically and traditionally performed by carmen under the effective Carmen's Special Rules of their effective Agreement. Therefore, when trackman Amatuccio was required to perform work that comes under the jurisdiction of Carmen, we maintain claimant Amatuccio should receive

claim based on a contract violation. One has no rights under contracts to which he is not a party except as they may become so by the provisions of his own agreement. In the present case, Claimant was directed to perform higher rated work falling outside the scope of the Maintenance of Way Agreement. When an employe is directed to perform service within the scope of another agreement, he is entitled to compensation at the rate of such position."

The carrier having offered to pay Trackman Amatuccio at the carman's rate, less amount already received, for the time consumed helping the wrecker crew has complied with the rules of the Maintenance of Way Agreement.

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

OPINION OF BOARD: On March 5, 1954, there was a derailment in the Carrier's yard, Oneonta, New York. Claimant trackman, Frank Amatuccio, was called with other trackmen at approximately 2:30 A. M. on March 5, 1954 to re-rail six cars that had been derailed as a result of having run through a switch. The wrecking crew was called to the scene in addition to the trackmen from the Maintenance of Way Department. During the course of the re-railment, blocking was needed to block up the outriggers on the wrecking crane. For this purpose, several trackmen carried pieces of blocking from the wrecker supply car to the point of derailment. In an effort to expedite the work the claimant was ued to build up this blocking under the out-riggers.

The claimant was paid for his services in re-railing these cars under Rule 19 of the Maintenance of Way Agreement. During the one (1) hour and fifteen minutes that the claimant was used to perform carmen's work, the Carrier offered to pay the claimant at the carmen's rate of pay.

The Organization stated that this claimant should be paid under the Call Rule, 6(f), of the Carmen's Agreement.

The Carrier states in its submission that this claimant performed the work of a Maintenance of Way Department employe before and after his duties in helping with the blocking which is carmen's work. This is not disputed by the Organization.

Therefore, this Board must find that the claimant performed Maintenance of Way work before he performed the higher rated carmen's work, and Maintenance of Way work after he performed the higher rated carmen's work. The claimant was properly paid for his call under Rule 19 of the Maintenance of Way Agreement and the Carrier's offer to pay him the carmen's rate for the one (1) hour and fifteen minutes that he performed carmen's work was justified under the composite rule of the Maintenance of Way Agreement, this being Rule No. 18. Therefore, this claim will be denied.

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 the Carrier did not violate the effective Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1960.