Award No. 11890
Docket No. MW-11462

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when, during the month of June, 1958, it assigned or permitted other than a Section Foreman to sight track for a Track Lining Machine on its Eastern Kentucky Division.

(2) Mr. H. W. Stone now be allowed eight (8) hours' pay at the Section Foreman's rate for each workday during the month of June, 1958 (except June 12, 1958) because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: As is customary throughout the railroad industry, the responsibility for keeping track in proper alignment and the responsibility to sight track that is being lined rests with the Carrier's Section Foremen. Such duty and responsibility has been inherent to a Section Foreman's position on this property ever since this railroad began operating.

During the month of June, 1958, the Carrier had a Track Lining Machine, operated by Track Liner Operator Lloyd Aines, assisted by an extra gang laborer, in service on its Eastern Kentucky Division.

During a portion of this month, the Carrier assigned or otherwise permitted the extra gang laborer to operate the track lining machine and Track Liner Operator Aines to sight the track that was being lined. Similarly, during the remainder of the month, the Carrier assigned or otherwise permitted its Track Supervisor and/or Assistant Division Engineer, who occupy positions excepted from the scope of this Agreement, to sight the track while Track Liner Operator Aines operated the track lining machine.

The Claimant, who has established and holds seniority as a Section Foreman in the Track Sub-department on the Eastern Kentucky Division,

It is carrier's position that having its supervisory officers supervise and observe the work constituted no violation of the maintenance of way agreement. There is no merit to the claim of the employes and it should be denied.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employes, either in conference or correspondence.

OPINION OF BOARD: The claim in the instant case alleges a violation of the agreement during the month of June, 1958, when the Carrier assigned or permitted other than a Section Foreman to sight track for a track lining machine on its Eastern Kentucky Division.

The Brotherhood advances the argument that only a Section Foreman may, under the rules and the agreement, sight track, but a diligent search of the record and of the awards cited finds no support for this contention.

The Brotherhood further alleges that the Supervisory force, not covered by the Agreement, was used to line and sight track in violation of the Agreement, but a preponderance of the evidence reveals that such supervisory force was present in its normal function and performed no work reserved to Maintenance of Way Employes covered by the Agreement.

For the reasons set forth above we must conclude that the claim lacks the merit for a sustaining award and must 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.