

Award No. 12008
Docket No. MW-10455

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when, on Saturdays of October 20 and 27, 1956 and during overtime hours on October 22, 23, 24, 25, and 26, 1956, it assigned an employee excepted from the scope of the Agreement to supervise the work of employees regularly assigned to the track gang under the supervision of Track Foreman D. B. Sisson.

(2) Track Foreman D. B. Sisson be allowed pay for thirty-one (31) hours at his time and one half rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimant, Mr. D. B. Sisson, was regularly assigned to the position of Track Foreman on Timber and Surfacing Gang No. 16. This gang was regularly assigned to a 40-hour work week, consisting of five days, eight hours each, with Saturdays and Sundays as regularly designated rest days.

Among the employees regularly assigned to the Claimant's gang and under his supervision were two Ballast Regulator Operators.

On Monday, September 10, the Claimant and the members of his gang commenced working at about Mile Post 784.8 on the Birmingham Division, working East. After this gang had worked East to about Mile Post 777, the Carrier received an attachment for one of the ballast regulators which resulted in a more satisfactory job of dressing the track than had theretofore been done by the ballast regulators. Consequently, the Carrier decided to re-dress the track from about Mile Post 777 to about Mile Post 784.8.

On Saturdays, October 20 and 27, 1956 and after regularly assigned hours on October 22, 23, 24, 25 and 26, 1956, the Carrier assigned Track Supervisor Sullens, who occupies a position excluded from the scope of this Agreement, to supervise the two ballast regulator operators who were regularly assigned to work under the supervision of the Claimant Track Foreman, in performing the work of re-dressing the above-referred to portion of the Carrier's tracks.

having heretofore recognized that it is without authority under the law to grant a new rule or working condition as here demanded by the Brotherhood, cannot do other than make a denial award.

All factual evidence submitted in support of Carrier's position has been made known to employe representatives.

Carrier, not having seen the Brotherhood's submission, reserves the right after doing so to present such additional evidence and argument as may be necessary for the protection of its interests.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims thirty-one hours' pay at overtime rates for Track Foreman D. B. Sisson who, it alleges, was improperly denied work on several days in October 1956 when Track Supervisor Sullens performed duties which, under the Agreement, belonged to Sisson. This claim is predicated on the charge that Sullens supervised two Ballast Regulating Machine Operators.

The record shows that (1) in September and October 1956 Claimant served as Foreman of Timbering and Surfacing Gang No. 16 which was assigned to work on the Birmingham Division; (2) Claimant, acting under the general supervision of Track Supervisor Sullens, had working with his gang two Ballast Regulating Machine Operators; (3) In October, 1956, following receipt of a new attachment for the ballast regulating machines, Carrier decided to redress a seven-mile section of track which had already been surfaced and timbered by Gang No. 16; (4) In order not to disrupt the daily progress of work of Gang No. 16, Carrier decided to have the two ballast machine operators work overtime to perform this redressing; (5) Track Supervisor Sullens ordered one operator to work ten hours on Saturday, October 20, 1956 (an assigned rest day) and two hours a day overtime on October 22, 23, 24, 25 and 26. On Saturday, October 27, he ordered two operators to work eleven hours (the Organization believes that two operators were assigned on all these days).

On November 20, 1956 Foreman Sisson submitted a claim stating:

"While working in the vicinity of Cooksprings, Ala., during the last half of October—1956, Mr. Sullens worked Ballast Regulators and operators on the following dates on overtime, October 20th—1956—10 hours. October 22nd, 23rd, 24th, 25th and 26th—1956—2 hours each day. October 27th—1956—11 hours. Total hours 31 hours.

I am claiming the above time for Mr. Sullen did not ask me about the men working on the above dates. He would tell the men during each day he wanted them to work."

In his Answer to December 4, 1956 Division Engineer Moore noted in part:

"... On the days you mentioned, Supervisor Sullens took the two ballast regulators as mentioned by you and dressed track over the stretch of track referred to, using the operators without a foreman. It is not my understanding that there is a disagreement about what was done."

In the absence of more conclusive evidence than this—and there is none—there is no warrant for finding that Sullens usurped Sisson's rule. There is

no evidence that Sullens instructed the Operators concerning the handling of their machines; there is no evidence that he coordinated their work with that of other employees; actually, there is no evidence on how long he remained with the Operators during the course of their overtime stints. In a word, the record does not substantiate the Organization's basic allegation that supervisory duties with respect to these Machine Operators which, customarily (and exclusively), are the Foreman's responsibility, were taken over or performed by the Track Supervisor.

There are two Board decisions affecting these parties on the subject of Foremen. In Award 11441, the most recent case, the Board held that:

"We have consistently held that, unless otherwise specifically provided in the Agreement, Carrier has the sole and exclusive right to determine when and under what circumstances a foreman is assigned to supervise a group of employees. Awards 11075 (Dorsey), 7059 (Carter), 6699 (Donaldson), and 6398 (McMahon).

There is no provision in the Agreement which requires the Carrier to assign a foreman to a labor gang servicing banana cars. The mere fact that a foreman was previously used to call and supervise the labor gang does not establish for all time an obligation that the Carrier continue to use a foreman."

Award 8849 concerned an Assistant Supervisor who, allegedly, performed the duties of a Section Foreman for three hours in connection with the work of two Section Laborers. Implicit in the Board's sustaining Opinion in that case was the assumption that the supervision exercised by the Assistant Supervisor was identical with that performed regularly by the Foreman. Since no such assumption or finding is warranted in the present case, Award 8849 cannot be deemed controlling.

Under the circumstances 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 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 evidence fails to support the claim that the Agreement was violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1963.