

Award No. 12560

Docket No. MW-11674

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

PACIFIC ELECTRIC RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when, on December 12, 1958, it assigned or otherwise permitted Track Supervisor, Juan Chavez and his motor car operator, Donaciano Jimenez, to adjust a switch point at Dolanco Junction during overtime hours.

(2) Section Foreman Alexander Paul and unassigned Trackwalker Feliciano Vallejo each be allowed a minimum call payment as provided in Rule 25.

EMPLOYES' STATEMENT OF FACTS: Mr. Juan Chavez is assigned to a position of Track Supervisor which is wholly excepted from the scope of the Agreement between the parties to this dispute. Since Track Supervisor Chavez travels over his territory by track motor car, Mr. Donaciano Jimenez is regularly assigned to operate the Track Supervisor's motor car. Although Mr. Jimenez is, in fact, a motor car operator and so referred to by rank and file employes, the Carrier's officials refer to him as a Trackwalker even though he never does walk over the track since he is constantly riding over track.

On the other hand, Mr. Alexander Paul is regularly assigned to the position of Section Foreman on Section 11, Dolanco Junction and, by virtue of such position, he is responsible for the proper maintenance, repair and upkeep of all tracks, switches, right-of-way etc., on that particular section.

Mr. Feliciano Vallejo holds seniority as a Trackwalker but was not working or assigned as such on the date here involved.

On December 12, 1958, Track Supervisor Chavez and his motor car operator (Jimenez) allegedly found a switch which needed repair and adjusting and they jointly made such repair and adjustment. Although Carrier contended that the allegedly maladjusted switch was discovered "at approximately 4:00 P. M." and after the "section gang had signed off duty at 3:45 P. M., Foreman Paul and his crew observed the Supervisor and Motor Car Operator

Group B

- Class 1. Switch Repairers
- Class 2. Switch Repairers' Helpers
- Class 3. Trackwalker
- Class 4. Track Laborers

The collective agreement also contains Addendum No. 1. This addendum provides for the rates of pay for the various subdepartments, i.e., Bridge and Building, Paving and Track, as well as the combination Paving and Track Subdepartments applicable to certain specialized classes carried under another portion of Rule 5.

Included in this addendum is Group "B" under the Track Subdepartment. Listed under this group are the following classes:

- Switch Repairer
- Switch Repairer Helper
- Trackwalker (Motor Car)
- Trackwalker Laborer (Section 6)
- Laborer

It will be noted from this group that Trackwalkers are rated in two different categories, i.e., the Trackwalker who does not operate a (Motor Car) and the Trackwalker (Motor Car) who does operate a Motor Car. This latter class receives a higher rate of pay and is the class assigned to operate the motor car upon which the Track Supervisor rides.

It may thus be readily seen that the duties of repairing the switch in question performed by the Trackwalker (Motor Car) were nothing more than duties normally required from him and duties which have been performed traditionally and from time immemorial on this Carrier by a Trackwalker (Motor Car). Thus any contention by the Employee that the Trackwalker (Motor Car) performed any services which he was not entitled by assignment and agreement provision to perform is without merit.

In view of the emergency conditions attached to the incident, it is the Carrier's position that the claim should be declined in its entirety as not supported by agreement provisions and many awards of this Division.

(Exhibits not reproduced.)

OPINION OF BOARD: The evidence in the record is conflicting relative to material issues of fact. We cannot resolve the conflicts. We must, therefore, dismiss the claim for failure of proof.

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 Employee involved in this dispute are respectively Carrier and Employee 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 claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1964.