

Award No. 13031
Docket No. MW-12593

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**DULUTH, MISSABE AND IRON RANGE
RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement when it did not permit or assign Section Foreman W. J. Moberg to supervise and direct the work of members of his gang on Saturday, January 9, 1960, but assigned said work to employees outside the scope of the Agreement.

(2) Section Foreman Walter J. Moberg be allowed eight (8) hours' pay at time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant employee was regularly assigned by bulletin to the position of Section Foreman on Section No. 3, Proctor, and was thereby responsible for the condition of tracks, switches and right-of-way on said territory.

He and his crew were regularly assigned to work on Mondays through Fridays.

On Friday, January 8, 1960, Section Foreman Moberg was instructed by the Roadmaster to assign two track laborers from his gang to report for work on Saturday, January 9, 1960, at the Yard Office at Proctor. He was further instructed that he would not supervise and direct the work of the two track laborers on that date because said track laborers would be working under the immediate supervision and direction of the Yardmaster and train crew in the performance of their work of cleaning switches. The notice on Friday of work assignment for the following day thus established that it was **not** emergency work.

Theretofore it was customary for the Claimant Section Foreman to supervise members of his crew in the performance of all track work, whether it was performed during regular hours or during overtime hours.

be dismissed or denied. If, for some unforeseeable reason, it should be upheld by your Honorable Board, the Carrier desires to point out that the claim for the penalty rate of time and one-half is contrary to the well-established principle consistently recognized and adhered to by the Board that the right to work is not the equivalent of work performed under the overtime and call rules. See Awards 5195, 5261, 5419, 5437, 5548, 5708, 5764, 5967, and many others.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Moberg was the Section Foreman assigned to Section 3 of Carrier's Yard at Proctor, Minnesota. On Friday, January 8, 1960, Carrier's Roadmaster instructed Claimant to have two members of his gang report for duty on Saturday, January 9, a rest day, for the purpose of cleaning switches. The employees reported and performed that work. Claimant asserts that he was told not to report for duty on that day.

It appears in the record that the Director of Personnel, in rejecting the claim, stated, among other things, that "the employees involved in this claim were not under the supervision of any other individual other than the Roadmaster." Claimant contends that this statement establishes that the work was performed under supervision of an officer outside the coverage of the applicable agreement. Other than Claimant's contention in regard to the foregoing statement, Claimant has offered no evidence that any individual either supervised or directed the employees who cleaned switches.

In opposition to Claimant's contention, Carrier maintains that all Maintenance of Way employees are under the Roadmaster, who directly or indirectly supervises every employee under his jurisdiction. It is the further contention of the Carrier that the two employees assigned to this work by the Section Foreman required no direct supervision by anyone, that each of these employees performed the work of cleaning switches on his own; that employees accompanied engines to clean switches during the winter season, that they know what to do, how to do it, and did the work without supervision.

The only real issue before this Board is whether the employees who cleaned switches on January 9, 1960, were directed or supervised by others.

The question of how much supervision is required over various operations is obviously one of managerial discretion, to be decided by the Carrier. The Scope Rule of the applicable agreement does not guarantee that a Section Foreman will individually supervise all or a part of his crew under every circumstance.

See Award 7059, Carter; Award 11075, Dorsey; Award 11441, Dolnick; Award 12073, Dolnick; Award 12415, Coburn.

Claimant has offered no competent evidence that any others outside of the applicable agreement directed or supervised the work performance of the two Maintenance of Way employees. The claim is without merit.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1964.