

Award No. 13073
Docket No. MW-13030

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the agreement when, on November 6, 1960 it assigned or otherwise permitted Supervisor Kelly and his motor car driver to inspect and repair a stripped rail joint at mile post 331.

(2) Section Foreman J. C. Holt and Section Laborer W. Pope each be allowed payment for a call account of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On Sunday, November 6, 1960, which is a rest day for the claimants, Supervisor Kelly was notified that there was a broken rail located at Mile Post 331, Birmingham Division. The Supervisor called his motor car driver and proceeded to said location, but found the trouble was a stripped rail joint and they made repairs thereto, after first obtaining necessary tools from the claimants' tool house.

The location of the stripped rail joint is on the section territory assigned to the claimants, who were available and willing to perform the work of repairing the rail joint. No effort was made by the Supervisor to call the claimants.

Claim was timely and properly presented and handled throughout all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated May 1, 1960, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The scope rule of the effective Agreement reads:

Both of the claimants are entitled to compensation in accordance with the provisions of Rule 31 which reads:

"CALLS

The basis of payment in Rule 30 (a) will also apply to time worked which is not continuous with a regularly assigned work period, with a minimum payment of 2 hours and 40 minutes at the time and one-half rate. Employees called for service on regular rest days and holidays and for work outside their regular assignment on regular work days, will be paid from the time they are notified to report until the time they return to their headquarters station."

We respectfully request that the claim be allowed.

CARRIER'S STATEMENT OF FACTS: On Sunday, November 6, 1960, 3:00 P. M., Supervisor Kelly was advised of a stripped track joint at Mile 331, Birmingham Division. He immediately contacted his motor car driver and together they proceeded to Mile 331 so that it might be determined whether or not it was necessary to put in a piece of rail; and if so, approximately how much labor would be needed. Upon arrival it was learned that a change in temperature had caused the joint to go back together and all that was necessary was for two bolts to be placed in the joint to hold it together. These two bolts were fit in place by the motor car driver.

POSITION OF CARRIER: The nature of the duties of the track supervisor are such that it is his responsibility, together with the Division Engineer, to know the condition of the trackage under his jurisdiction. It was for the purpose of determining the condition of the track at Mile 331 that Supervisor Kelly made the trip on his motor car. Had extensive repairs been necessary, he would have arranged for such force as needed to do the work. However, since it was just a case of fitting a joint, all that was necessary was for the motor car driver to apply two bolts and tighten them. He is an employee covered by the agreement and it is common practice on the Birmingham Division that all motor car operators in going over the supervisor's territory, with or without the supervisor, replace bolts, tighten bolts, drive spikes, and perform any other small tasks that come to their attention and knowledge in their tour of duty.

We believe the claim to be rather ridiculous. However, the work was performed by an employee covered by the agreement. It is carrier's position the agreement has not been violated. The claim, therefore, should be denied.

OPINION OF BOARD: On Sunday, November 6, 1960, a rest day for the Claimants, Supervisor Kelly, an employee of the Carrier excluded from the Scope of the Agreement, was informed either that there was a broken rail or a stripped track joint (and for this case it makes no difference which); together with his motor car operator he proceeded to the location, discovered that the only repair necessary was fitting a joint by applying two bolts and tightening them; the motor car operator made this repair.

It is the contention of the Organization that Supervisor Kelly and his motor car operator performed work belonging to the Claimants.

It is the contention of the Carrier that: Supervisor Kelly performed work which is not exclusively reserved to the section foreman, but which is part of his normal function as a supervisor to know the condition of the trackage

under his supervision; and that it is a common practice on this Division that all motor car operators replace bolts, tighten bolts, etc. as such tasks come to their attention during their tour of duty.

The Organizaion has referred to Award No. 4946 (among others) as supporting of its contentions; the Carrier has referred to Award No. 10703 (among others) as supporting of its contentions. Both awards throw light on the issue herein, and both define one of the limits of proper activity for a Supervisor outside the Scope of the Agreement; the line drawn in each is at virtually the same place. Says Award 4946: "The inspection to determine the extent of the repairs to be made and the manner of their making is a section foreman's work, but an inspection to determine if the damage requires immediate correction or otherwise is not the exclusive work of a section foreman. (Emphasis ours.) And Award No. 10703 says: ". . . it is the contention of the Carrier that the Supervisor went to the scene for the purpose of ascertaining whether the switch needed repairs, as he properly had a right to do and that the functions performed by him, under the circumstances in removing the sand to inspect the switch were proper functions for an officer of the Carrier; that his sweeping of the sand from the switch was purely incidental to his responsibility in determining whether repairs were necessary..." "It was entirely proper," said the Board in that case, "under the situation presented here, for the Track Supervisor to inspect the switch for a determination of whether repairs to the switch were needed. . . ."

Carrier's Statement of Facts recites that after being notified of a stripped track joint, Supervisor Kelly and his motor car operator "proceeded to Mile 331 so that it might be determined whether or not it was necessary to put in a piece of rail; and if so, approximately how much labor would be needed." And Carrier stated in Position of Carrier: "It was for the purpose of determining the condition of the track at Mile 331 that Supervisor Kelly made the trip on his motor car. Had extensive repairs been necessary, he would have arranged for such forces as needed to do the work. However, since it was just a case of fitting a joint, all that was necessary was for the motor car driver to apply two bolts and tighten them." (Emphasis ours.)

But the question of whether the Agreement was breached by the Supervisor's activity does not turn on the amount of work required to make the repair, but on whether he was inspecting to determine whether any repair was needed at all, in which case he was performing an inspection proper for an official excluded from the Scope, or whether he was inspecting to determine the extent of the repairs to be made and the manner of their making, in which case he was performing work which belonged to the section foreman. This question is answered by the Carrier's presentation quoted above.

The fact that the amount of work to be done, both in the inspection and in the repair, was small, does not alter the requirement of Rule 30 (f). Award 12844, cited by both parties, says: "Although the Scope Rule for Foremen does not describe work, it is well established that work content for employes covered by the Agreement is determined by the work such employes customarily do." Repair of the track in this section is the regular work assignment of the section foreman and the laborers. The motor car operator was not the regular employe assigned to the section crew; what repair work he may have done during his travels on the motor car was incidental to his basic duties and not usually performed under the circumstances described here, where a call came in indicating that repairs might be needed at a particular place.

For the reasons set forth, we will find that the Carrier did violate the Agreement.

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

The Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1964.