

Award No. 13198
Docket No. MW-13280

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE DENVER UNION TERMINAL RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when, on December 5, 1960, it assigned or otherwise permitted Section Foreman T. A. Sams to perform section laborer's overtime work from 4:00 P. M. to 10:00 P. M., after sending Section Laborer Jerry J. Vegas home at 4:00 P. M.

(2) Section Laborer Jerry J. Vegas be allowed six (6) hours' pay at his time and one-half rate account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Section Laborer Jerry J. Vegas is a regularly assigned section laborer who is assigned to work Monday through Friday of each week. He is assigned by bid and award to a position in the gang under the supervision of Section Foreman T. A. Sams.

Because of snow on Monday, December 5, 1960, the entire crew under the jurisdiction of Foreman T. A. Sams was used in snow removal service. However, at 4:00 P. M., Foreman Sams sent his entire crew home and, from 4:00 P. M. to 10:00 P. M., Foreman Sams performed snow removal service theretofore performed by section laborers.

Claim was timely and properly presented and handled at 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 September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Mr. Jerry J. Vegas has established seniority as a section laborer in accordance with the provisions of Rule 1 which reads:

"Seniority begins at the time the employes pay starts".

permits the use of Section Foreman to do all work as long as his rate is maintained.

Further, it is the position of the Carrier that Mr. Sams, Section Foreman, has worked on many occasions on overtime with section laborers and was paid overtime at his regular rate and that is not prohibited by any rules of the Maintenance of Way Agreement. Further, Section Foreman Sams has done this work on many occasions on his regular assignment. We contend that there are no restrictions in the Scope Rule or in any other agreement prohibiting the Carrier from using the Section Foreman to do this work either on regular assignment or on overtime. Claim must be denied.

OPINION OF BOARD: On Monday, December 5, 1960 a work gang under Section Foreman T. A. Sams worked on snow removal until 4:00 P. M. The crew was sent home at that time although Foreman Sams continued to work.

The Organization filed the instant claim contention that Section Laborer J. J. Vegas should have been asked to stay over for the extra work, and is therefore entitled to six hours overtime pay. It claims that this work was customarily and traditionally within the province of the section laborers and that therefore Vegas had the right to do it on overtime. The Organization points out that a section foreman may supervise but not do the work of a section laborer; and that the section laborer thus denied work is entitled to compensation for earnings lost.

The Carrier contends that the Scope Rule of the Maintenance of Way Agreement does not restrict the use of anyone covered by it, does not give section laborers exclusive right to shovel snow, and in conjunction with Rule 40, gives the section foreman the right to do all work therein provided his rate is maintained. It asserts that Foreman Sams has worked regular and overtime hours with section laborers in the past without protest. It concludes by pointing out that no provisions of the parties' Agreement have been violated by its actions.

It has been well established by the prior awards of this Board that the Claimant must bear the burden of proving exclusive jurisdiction over work to exclude others from its performance. This Board has held further that where there is a challenge of jurisdiction between employees of the same craft in different classes the burden of proving exclusive jurisdiction is even more heavily upon the Petitioners (13083).

In the instant case, the Scope Rule does not make any such reservation of the contested work to section laborers. Furthermore, there is evidence that the section foreman had, in fact been engaged in the same work himself without protest.

Accordingly we find the claim lacks 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 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 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 13th day of January 1935.