

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) The Carrier violated the Agreement when it assigned Assistant Extra Gang Foreman Andrew Deyo to perform Extra Gang Foreman's work on August 1, 2, 3, 6, 7, 8, 9, 13, 14, 15, 16 and 17, 1962 and failed and refused to compensate him therefor at the Extra Gang Foreman's rate of pay (System Case No. 5.63 M.W.).

(2) Assistant Extra Gang Foreman Andrew Deyo be allowed the difference between what he should have been allowed at the Extra Gang Foreman's rate of pay and what he was paid at the Assistant Extra Gang Foreman's rate of pay for the services rendered on the dates referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimant was employed as a regularly assigned assistant extra gang foreman in Extra Gang No. 211, working under the supervision and direction of Extra Gang Foreman Delello.

On August 1, 2, 3, 6, 7, 8 and 9, 1962, the claimant performed the customary and traditional work of an extra gang foreman when Extra Gang Foreman Delello was assigned to work with Extra Gang No. 307. On these dates, the claimant supervised the activities of trackmen in performing the work of patrolling and maintaining track.

On August 13, 14, 15, 16 and 17, 1962, the claimant performed the customary and traditional work of an extra gang foreman, and filled the position of vacationing Extra Gang Foreman Sandoli when he directed the activities of the operator of Spot Tamper PB-7 in performing the work of raising (surfacing) track between Maryland and Schenevus.

On these dates, the claimant was not working with or under the supervision of any foreman.

For this service the claimant was compensated at the assistant extra gang foreman's rate of pay.

member of his gang. Prior to August 1, 1962, Extra Gang Foreman Delello had been patrolling track along with his other duties. On August 1, 1962, he was assigned to supervise a Tie and Surfacing project with Extra Gang #307 at Windsor. The track patrol function was turned over to the supervision of Extra Gang Foreman P. Palmatier, who instructed his Assistant Extra Gang Foreman, claimant Deyo, to perform the work. Therefore, the mere fact that Extra Gang Foreman Delello had personally been performing the track patrol duties prior to the time that claimant Deyo was instructed by his foreman to perform the work appears to be the basis for this portion of the claim.

The final portion of the claim covering the week of August 13 through 17, 1962, concerns claim by the Organization for Extra Gang Foreman's rate of pay for claimant Deyo when he was assigned to work with Spot Tamper PB-7 sighting and raising track between Maryland and Schenevus. Prior to the time that claimant was assigned by his foreman to this duty, PB-7 had been used by Extra Gang Foreman Sandoli of Gang #310 with headquarters at Bainbridge. In this instance also, the mere fact that Sandoli had been in charge of the machine when it was assigned to Extra Gang #310 appears to have led to this claim. It is and has been the position of the carrier that the operation of a spot tamper may be directed by an Extra Gang Foreman or an Assistant Extra Gang Foreman, as appears best under the particular circumstances involved. It is sometimes expedient for the carrier to assign an Extra Gang Foreman to work with the machine over the entire confines of a seniority district, and this has been done on occasions in the past in order to get optimum utilization of these expensive machines. On other occasions, the machine is assigned to a larger extra gang and in these instances, the Extra Gang Foreman may supervise the operation of the machine himself, or assign his Assistant Extra Gang Foreman to that duty. It is the position of the carrier that the sustaining of this portion of the claim would have the effect of writing new rules by Board decision, i.e., whenever a track maintenance machine is operated on the lines of this carrier, an Extra Gang Foreman must be assigned to its operation.

It is the position of the carrier in this dispute that none of the work performed by claimant Deyo which is the subject of this dispute, is, or has ever been, the exclusive work of an Extra Gang Foreman. This being a historically proven fact, the claim must be denied.

OPINION OF BOARD: During the period from August 1 to August 9 inclusive. Extra Gang Foreman Delello was assigned to work with another gang. The Petitioner contends that during his absence the Claimant was required to perform the work of an extra gang foreman. The evidence is insufficient to support this part of the claim.

During the period from August 13 to August 17 inclusive, the Claimant performed work of raising track. This work had been assigned to Extra Gang Foreman Sandoli until he went on vacation. The Claimant is an Assistant Extra Gang Foreman performing the work of a foreman while the foreman is on vacation. Under Article 10 (a) of the Vacation Agreement of December 17, 1941, the Claimant is entitled to be paid the foreman's rate of pay for that period instead of the assistant foreman's pay.

This same issue has been determined in Award 12971. We concur with the decision expressed therein.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated in part.

AWARD

Claim sustained in part as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1965.