

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, during the period from October 25, 1962 to November 30, 1962 (both dates inclusive), it assigned a Track Equipment Operator instead of an Extra Gang Foreman to perform the work of calculating the realignment of curves and of directing the activities of trackmen. (System Case No. 8.63 M.W.)

(2) Stephen Mazzarella be allowed a wage adjustment to provide him with the difference in pay between what he did receive and what he should have received at the extra gang foreman's rate for the period referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: During the period from October 25, 1962 to November 30, 1962, the Carrier assigned Track Equipment Operator Raymond Haun, who holds no seniority rights on the Susquehanna Division, to perform the work of calculating the realignment of curves and of directing the activities of trackmen on the Susquehanna Division.

The work of calculating the realignment of curves and directing the activities of trackmen is one of the customary and traditional duties of an extra gang foreman.

The claimant has established and holds seniority rights as a track foreman on the Susquehanna Division as of October 16, 1938. However, due to force reduction, the claimant was unable to hold a regular position as a foreman.

The claimant was fully qualified to perform the subject work and would have done so had the Carrier assigned him to it.

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 November 15, 1943, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

Division in Awards 6398 (McMahon), 7059 (Carter), 11075 (Dorsey), and 11441 (Dolnick), which held in essence that it is the sole and exclusive right of the carrier to determine when and under what circumstances supervision will be assigned to a given operation. During all of the time that the surfacing project between Richmondville and Central Bridge was being carried on, the project was under the supervision and control of an Extra Gang Foreman, and for the major portion of the project, an Assistant Extra Gang Foreman was also assigned. It is the position of the carrier that this was all the supervision needed or required on the project. The contention of the Organization in this dispute, carried to its ultimate application, could conceivably result in a future surfacing project requiring six track maintenance machines being manned by six machine operators, and six Extra Gang Foremen, one for each machine.

Historically, spot surfacing of track which comprehends the raising and lining of irregular spots in the track has been done by Trackmen, Assistant Foremen and/or Foremen. It has always been the responsibility of the regular track gang and the work was always done by the men assigned to the gang. It is alleged in this dispute that Track Machine Operator Haun performed the duties of an Extra Gang Foreman when assigned to the operation of a Track Liner calculating the realignment of curves. Operating a Track Liner in all its phases includes the calculating of the realignment of curves which is done by inspection of dials which are a part of the machine. The distance the track is thrown is indicated on these dials where the Operator can easily read them, and this work is part of the regular duties of the Track Machine Operator assigned to the machine. It is not alleged by the Organization that claimant Mazzarella should have been allowed to operate the machine, as a matter of fact, he was not qualified to do so. Rather, it is the contention of the Organization, in effect, that each time a track machine is operated—in this particular dispute—a Track Liner—that an Extra Gang Foreman be assigned to the operation.

In conclusion, it is the position of the Carrier that this dispute, as handled and appealed on the property, is entirely without merit and should be denied. Furthermore, any sustaining award would have the effect of writing a new rule for the parties by Board edict, 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. Such is obviously not within the province and powers of the Third Division.

OPINION OF BOARD: The Petitioner contends that a Track Equipment Operator performed work which was exclusively that of an Extra Gang Foreman. The work involved was the calculation of the realignment of curves and the direction of trackmen.

The evidence is insufficient to support the claim that the Claimant performed work which was exclusively that of a foreman. We find that a Track Equipment Operator had the right to operate the machine. If the machine has been developed to the extent that the operator can calculate the alignment of the track by using the machine and not performing duties formerly done exclusively done by foreman, then there would be no violation.

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 respec-

tively 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 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 5th day of February 1965.