

Award No. 13469
Docket No. MW-14636

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Arnold Zack, 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, instead of calling and using Track Laborers E. T. Martin and J. L. Powell to perform overtime service from 11:00 A. M. to 1:00 P. M. on January 11, 1963, it called and used two junior laborers from the same gang. (Carrier's file E-349-5).

(2) The Carrier further violated the Agreement when it assigned or otherwise permitted Supervisor Shope instead of Track Foreman W. S. Smith to issue instructions to and to supervise the track laborers in performing the overtime service referred to in Part (1) of this claim.

(3) Section Foreman W. S. Smith and Laborers E. T. Martin and J. L. Powell each be allowed two (2) hours' pay at their respective time and one-half rates because of the violations referred to in Parts (1) and (2) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimants, Section Foreman W. S. Smith and Section Laborers E. T. Martin and J. L. Powell, were regularly assigned to their respective positions with a section gang which was engaged in the lowering of the track through the Solway Tunnel. This gang was assigned to a work week extending Monday through Friday with daily assigned hours from 1:00 P. M. to 9:00 P. M.

At the close of work on January 10, 1963, Track Supervisor Shope instructed two section laborers from this gang, who hold less seniority than Claimants Martin and Powell, to report for work at 11:00 A. M. the following day in order to assist the Motor Car Maintainer to repair equipment being utilized on the track lowering project. In compliance with said instructions, the two junior section laborers worked with the Motor Car Maintainer during overtime hours from 11:00 A. M. to 1:00 P. M. on January 11, 1963.

Instead of calling and using Section Foreman W. S. Smith to direct and supervise the work of these section laborers during this overtime period, such work was performed by Track Supervisor Shope, whose position is excepted from the provisions of the subject Agreement.

tention similar to that asserted here was made but rejected by us."

Carrier submits that the foregoing shows there is no merit to the claim and that it should be denied.

OPINION OF BOARD: On January 10, 1963 a section gang was engaged in lowering track running through the Solway Tunnel. At 9:00 P. M. that evening, Track Supervisor Shope instructed two laborers from the gang to report to work at 11:00 A. M. the following day to assist the Motor Car Maintainer in his work. The employes worked from 11:00 A. M. to 1:00 P. M. on January 11, 1963 before commencing their regular shift hours. The instant claim was filed by two senior employes in that gang claiming a prior right to the overtime work and by the Section Foreman claiming a right to supervise when section laborers under his jurisdiction are called to overtime work.

The Organization contends that although the Motor Car work might have been beyond the scope of work usually performed by Maintenance of Way Employes, when the Carrier determined that such employes were to perform this work, he was obligated to select them on the basis of seniority. The Claimants were equally available, ready, willing and fully qualified to perform the work. It similarly argues that the Section Foreman had the right to supervise the work of employes in his section gang.

The Carrier denies liability on the theory that the work performed was not within the scope of work normally performed by Maintenance of Way Employes, and was thus beyond any contractual arrangement between the parties. It asserts that it was free to select employes from any craft for the work involved and that since the parties' Agreement was not binding, it was free to ignore the seniority provisions therein. It denies that the Track Supervisor supervised the employes and asserts they were supervised by the Maintainer eliminating the need to have the Section Foreman present.

The parties are in agreement that the work performed from 9:00 A. M. to 11:00 A. M. on January 11, 1963 was beyond that encompassed by the Scope Rule of the parties contract. As such the Organization had no inherent right to demand that such work be done by Maintenance of Way Employes. The Carrier was free to select employes of several other crafts to do the disputed work. However, the determining fact is that the Carrier decided to have the work done by employes in the Maintenance of Way craft. In so deciding, it brought into effect the collective agreement which it has with that craft, and is therefore obligated to abide by its provisions. Such has been the ruling of this Board in many previous awards: 5604, 5939, 6306 and 13177.

We therefore find Rule 30 (f) to be controlling in this case:

"The senior available men shall be given preference in the assignment of overtime work on their home sections."

Inasmuch as the two senior Claimants were available, and according to the evidence, capable of performing the work involved, we find the Carrier erred in assigning junior laborers to the disputed work.

Turning to the right of the foreman to be called to supervise his laborers when doing work other than that normally under his jurisdiction we are in agreement with the ruling of this Board in Award 11441 as follows:

"We have consistently held that unless otherwise specifically

provided in the Agreement, Carrier has the sole and exclusive right to determine when and under what circumstances a foreman is assigned to supervise a group of employees."

Accordingly this portion of the claim is denied.

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 Carrier did violate the Agreement regarding Part 1 of the claim, but did not violate the Agreement regarding Part 2 of the claim.

AWARD

The claim is sustained insofar as it allows Laborers E. T. Martin and J. L. Powell each two (2) hours pay at their respective time and one-half rates because of the violation referred to in Part 1. It is denied insofar as it concerns the Claim of Section Foreman W. S. Smith.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1965.