

Award No. 13765
Docket No. MW-13647

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
FLORIDA EAST COAST RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement when it failed and refused to compensate Laborer G. H. Harnois at the pipe gang foreman's rate of pay for services performed in that class on May 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29 and 30, 1961.

(2) Laborer G. H. Harnois now be allowed the difference between what he was paid at the laborer's rate of pay and what he should have been paid at the pipe gang foreman's rate of pay for the service referred to in Part (1) of this claim."

EMPLOYES' STATEMENT OF FACTS: Prior to May 15, 1961, a pipe gang was stationed at Hialeah Yard, Florida, where it was engaged in the installation of new water and air lines. Claimant was regularly assigned as laborer with this gang.

On May 15, 1961, the subject pipe gang, with the exception of Laborers G. H. Harnois and L. E. Spence, were moved to New Smyrna Beach, Florida. Laborers Harnois and Spence remained at Hialeah Yard to complete the work at that location.

During the period in question, the claimant was assigned to supervise and direct the work of Laborer Spence, in addition to his other duties. Moreover, the claimant was required to assume sole and full responsibility for the quality and quantity of work performed, as well as to prepare and submit the required time reports, work reports, etc., during this period.

Claimant Harnois received no additional compensation for the extra duties and responsibilities assigned to him.

The Agreement in effect between the two parties to this dispute, dated February 1, 1942, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: It is an indisputable fact that the work performed by Claimant Harnois during the period from May 15, 1961 through

ported his progress and time to him. Such handling is commonplace on this Railway, without the Employes ever before advancing the theory that the employe performing the work was entitled to Foreman's rate of pay simply because a Foreman was not standing over him at all times. For example, a laborer whose time is carried and reported by the Section Foreman at New Smyrna Beach, has for a number of years reported at the New Smyrna Beach Passenger Station on Saturdays and Sundays to handle the garbage and refuse from the Railway's passenger trains, performing his work without the supervision of his Foreman. Similarly, a laborer of a maintenance gang has reported for many years in the Miami-Buena Vista-Hialeah Terminal on Saturdays, a rest day of his Foreman, and performed certain cleaning work without the immediate supervision of his Foreman. Thus, there was nothing unusual about Claimant Harnois in the instant case performing service on various special projects without the immediate supervision of his Foreman.

In a situation comparable in all pertinent respects to the instant claim, the Third Division in its Award 6349, rendered with the assistance of Referee Livingston Smith, denied the claim of the Employes, holding that:

"The effective agreement here contains no consistent rule which makes it mandatory for a foreman to personally supervise his men. In the absence of such a rule we must look to the type of work to be done and the conditions under which it was to be performed. It is the province of the Carrier to determine the amount of supervision, if any, that is required in the performance of work of the type here involved. There is no showing that the work could or would have been completed more satisfactorily or expeditiously had the claimant here been called."

See also Third Division Awards 4992 and 7059.

From the above, it is readily apparent there is no basis for the instant claim, or, as stated in Third Division Awards 8851 and 8854, Referee Bakke presiding:

"We cannot sustain claims against a carrier without showing a violation of some rule of the agreement."

For the reasons stated, the claim is without merit and should be denied.

OPINION OF BOARD: The present claim is that Claimant should receive the gang foreman's rate of pay for 12 days' work during May, 1961, since in addition to his other duties, he was assigned to supervise and direct the work of Laborer Spence on each of those days.

Like Spence, Claimant is regularly employed as laborer on a pipe gang. Immediately prior to May 15, 1961, the first claim date, both had worked with their gang under their Foreman at Hialeah Yard, Florida, in the installation of new water and air lines. On May 15, 1961, the pipe gang, except for Claimant and Spence, was removed to New Smyrna Beach, Florida; Claimant and Spence remained at Hialeah Yard to complete the work at that location.

The record is barren of persuasive evidence that Claimant was assigned to, or actually did, supervise Spence's work. While he did render reports to his Pipe Gang Foreman as to the work performed and time earned, this, alone, particularly when viewed realistically in the light of the entire situation, is

not sufficient to substantiate the claim that he performed the duties of foreman with respect to a fellow laborer. See Award 4052.

To prevail, claims must be supported by competent and reasonable evidence. Mere contention, conjecture and suspicion are not the equivalent of the affirmative proof necessary to establish a case.

In view of the lack of supporting evidence in this matter, the claim must be denied.

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

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 26th day of July 1965.