

Award No. 13838
Docket No. MW-12050

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SEABOARD AIR LINE RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement beginning on May 8, 1959 when it assigned a Welding Sub-department Foreman instead of a Track Sub-department Foreman to supervise a group of Track Sub-department employees who were "performing work of the nature generally performed by track laborers."

(2) Mr. C. E. Tucker now be allowed the difference between what he received at the Apprentice Foreman's rate and what he would have received at the Extra Gang Foreman's rate if he had been properly assigned to perform the supervision work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On or about April 5, 1959, the Carrier placed into operation a new Rail Welding Plant at its Old Savannah Yard, Savannah, Georgia, for the purpose of welding rails into continuous lengths.

Up until May 8, 1959, Claimant C. E. Tucker, who has established and holds seniority in the Track Sub-department, and who was assigned to the position of Extra Gang Foreman in that Sub-department, supervised and directed the work of Track Laborers in the performance of rail-handling work at this facility.

Effective as of May 8, 1959, the Track Laborers, together with the rail handling work, were arbitrarily removed from the claimant's supervision and jurisdiction and were thereafter assigned to the supervision and jurisdiction of the welding Sub-department Foreman. Effective as of May 11, 1959, the claimant's Extra Gang Foreman's position was abolished and the claimant was returned to the position of Apprentice Foreman as will be noted from the following:

welding plant incidental to it being welded into ribbon rail and to carry the time worked by them.

OPINION OF BOARD: In the handling of the dispute on the property and in its submission to this Board the Carrier took the position that the claim had not been handled in accordance with the requirements of Article V of the Agreement of August 21, 1954. That issue was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretation or application of certain stated provisions of specified National Non-operating Employee Agreements. On March 17, 1965, that Committee rendered the following Findings and Decision (NDC Decision 8):

"FINDINGS: (ART. V) Paragraph 1 (a) of Article V of the August 21, 1954 Agreement provides that —

'All claims or grievances must be presented in writing by or on behalf of the employee involved * * * within 60 days from the date of the occurrence on which the claim or grievance is based. * * *'

"On June 30, 1959, monetary claim, which except as indicated below was essentially the claim set forth above, was presented on behalf of Tucker. The 'Statement of Claim' included another money claim, growing out of the same alleged violation, on behalf of the 'senior employee holding Foreman's seniority on the Carolina Division and working in the lower ranks.' The 'date of occurrence on which the claim or grievance was based' as set forth in this initial claim was April 5, 1959, and the claim was handled on the property up to the highest officer of the carrier on that basis.

"During the handling on the property, officers of the carrier pointed out, on several occasions, that the action complained of took place on May 8, 1959, rather than on April 5, 1959; and the carrier's highest officer objected to the claim on behalf of 'the senior employee holding Foreman's seniority on the Carolina Division and working in the lower ranks' as not being in conformity with Article V of the August 21, 1954 Agreement.

"The employees' submission to the Third Division, N.R.A.B., shows the 'date of occurrence' as May 8, 1959 and Mr. C. E. Tucker as the only claimant.

"The National Disputes Committee rules that the claim submitted to the Third Division in Docket MW-12050 complies with the requirements of Article V of the August 21, 1954 Agreement.

"DECISION: The claim in the instant dispute, as submitted to the Third Division, complies with the requirements of Article V of the August 21, 1954 Agreement.

"This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division, N.R.A.B., for disposition in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

Proceeding now to the merits of the claim, the following facts are deemed material and relevant:

Early in 1959 facilities were constructed by the Carrier at Savannah, Georgia, for the welding of rail into continuous lengths; what is commonly referred to as "ribbon rail." An extra gang in charge of Foreman C. E. Tucker, the Claimant herein, performed the necessary track work in constructing the plant. The construction work was completed on May 7, 1959, whereupon the extra gang was cut off and Claimant reverted to his position of Apprentice Track Foreman on May 8.

When the welding plant was placed in operation, this being a new process on this Carrier, two welding gangs were organized to do the work, on two shifts, the gangs consisting of foremen, welders, welder helpers, and laborers to handle the rail from storage tables or racks on rollers to and from the points or stations where the rail was heated, welded and cut. Laborers cut off with the extra gang on May 7 were assigned to the welding gangs, under the supervision of the welding foremen, beginning May 8 and remaining until July 9, 1959, when the rail welding operations were completed and the gangs cut off.

Employees contend that an extra gang foreman should have been placed in charge of the laborers.

Carrier asserts that the work performed by the laborers at the welding plant "was an integral part of the welding operations" which were under the supervision of a welding foreman, and that there was no need for or an agreement rule requiring the use of a gang or track foreman to supervise the aforesaid work.

Rule 1 of the Agreement is the Scope Rule and lists the classifications of "Extra Gang Foremen" and "Laborers" within the Sub-department titled "Track". As we understand the Employees' position, it is, in effect, that by reason of the inclusion of these classifications within the same sub-department, no one other than foremen so listed therein may properly be used to supervise any work performed by such laborers.

The Board has heretofore ruled on claims similarly grounded. In Award 4992 (Referee Carter) we said:

"We think it is within the province of the Carrier to determine the amount of supervision needed to properly expedite the work. If the foreman's position is not required and the supervisory duties of the position can be handled by other supervisory officers who are entitled to perform it, we can find no rule of the Agreement prohibiting such handling. * * *"

Again in Award 6705 (Referee Donaldson) the Board, in denying a claim that a painter foreman should have been used when painters were assigned to work under the supervision of a B&B foreman, held:

"* * * Hence the classifications in themselves and the Memorandum of Agreement which brought them into being, gave no rights to insist upon any certain composite in forces and the Carrier's right to arrange its forces and determine what supervision was necessary, continued unimpaired.

"We are not here concerned with the taking of work out from under one agreement and placing it under another. Simply, that with a diminution of work the further need of special supervision

disappeared and the work was combined under another foreman subject to the same agreement. We have recognized Carrier's rights in this regard in Awards 5149, 4992, and 4235 among others."

The issue here raised appears to have been settled by prior Board rulings. There is nothing in evidence here which would compel the reversal of these well-reasoned and sound decisions. Accordingly, the claim will 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 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 of the parties 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 17th day of September 1965.