

**Award No. 14451
Docket No. MW-12492**

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

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

- (1) The Carrier violated the effective agreement when it on or about July 21, 1958 established or continued a section with headquarters at McBaine, Missouri, and assigned the position to an individual who holds no rights as Section or Relief Foreman.
- (2) That the senior furloughed Section Foreman or Relief Foreman holding seniority on Seniority District No. 1 be compensated at Section Foreman's rate of pay while the position was being filled by an individual holding no rights as such.

EMPLOYEES' STATEMENT OF FACTS: On or about July 21, 1958, Mr. W. A. Thornton, when the section to which he was assigned was abolished, exercised seniority as section laborer on Section 110, headquarters at North Jefferson, Missouri, was assigned headquarters at McBaine, Missouri, furnished a small motor car and a set of tools to perform maintenance service on the Columbia Branch while receiving compensation as section laborer assigned to Section 110 at North Jefferson, Missouri, and that the Roadmaster had complete and entire control over the activities of Mr. Thornton in performing the services which were identical in every respect to that of Section Foreman.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Under date of November 20, 1959, General Chairman E. Jones of the Brotherhood of Maintenance of Way Employes filed claim with Division Engineer J. H. Hughes (Carrier's Exhibit A, Sheets 1 and 2), alleging, among other things, that:

"The Carrier violated the effective agreement when it on or about July 21, 1958, established or continued a section with headquarters at McBaine, Missouri, and assigned the position to an individual who holds no rights as Section or Relief Foreman." (Emphasis ours.)

Such an allegation is directly contrary to the facts in this case.

This alleged claim challenges the right of the Carrier to have a Section Laborer perform certain patrolling work, including the making of minor track repairs, apart from the balance of the section gang to which he is assigned, and without direct supervision of his Foreman.

The Section Laborer (sometimes referred to as Track Walker) in question is assigned to the Section Gang which has headquarters at North Jefferson, Missouri. The territory of this gang extends westward from North Jefferson to a point just east of McBaine, Missouri, where the branch line known as the Columbia Sub-Division joins the main line, and also includes the entire Columbia Sub-Division. This Laborer (or Track Walker) works under the jurisdiction and supervision of the Section Foreman of the North Jefferson Section Gang, reports to that Section Foreman, receives instructions from that Section Foreman, his time is kept by that Section Foreman, and material used by him is charged out to and accounted for by that Section Foreman. Because his duties consist principally of patrolling the track between the junction just east of McBaine, Missouri, and Columbia, Missouri, and making such minor repairs to that track as he is able to perform, this man begins and ends his tour of duty each day at McBaine, Missouri, rather than at North Jefferson, but he is still a member of the North Jefferson Section Gang.

It will be observed that it is the contention of the Organization that, by handling in the above-described manner, the Carrier has established or continued a section with headquarters at McBaine, Missouri, and assigned the position to an individual who holds no rights as Section or Relief Foreman. This contention of the Organization has been and is denied by the Carrier.

This alleged claim has been progressed in the usual manner on the property up to and including the undersigned highest operating officer of the Carrier authorized to handle time claims; has been declined by the undersigned, and has been discussed in conference by the parties.

Attached as Carrier's Exhibit A is a photocopy reproduction of all correspondence between the parties in connection with this alleged claim.

The controlling Agreement, No. DP-173, effective September 1, 1949, and the National Agreement of August 21, 1954 are on file with the Third Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: It is agreed by the parties that this case is identical in all material respects to Award 14450. Accordingly, we adopt the Opinion therein as determinative of the issues in this dispute.

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 does not have jurisdiction over the dispute involved herein; and

That the Claim is barred.

AWARD

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1966.