

Award No. 14835
Docket No. MW-13388

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold M. Zack, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

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

(1) The Carrier violated the effective Agreement when it required and assigned Water Service Mechanic Willard H. Donelson to perform duties and responsibilities of a Water Service Foreman at San Luis Obispo, and failed and refused to compensate him therefore at the Water Service Foreman's rate of pay.

(2) The Carrier further violated the Agreement when it failed to bulletin the position of Water Service Foreman at San Luis Obispo.

(3) Claimant Willard H. Donelson be paid the difference between what he should have been paid at the Water Service Foreman's rate and what he was paid at the Water Service Mechanic's rate for each day beginning with sixty (60) days retroactive from date of claim presentation on January 26, 1961 and continuing until the violations referred to in Part (1) and (2) are discontinued.

(4) The position of Water Service Foreman at San Luis Obispo be bulletined and awarded in conformance with agreement rules.

EMPLOYEES' STATEMENT OF FACTS: Prior to November 18, 1958, Water Service Gang No. 2, with assigned headquarters at San Luis Obispo, California, was in active service and it consisted of a Foreman, Mechanics and Helpers. It continued in operation until November 18, 1958, at which time the Water Service Foreman's position and Water Service Gang No. 2 were abolished and the remaining personnel of the gang (3 water service mechanics) continued working at San Luis Obispo and were assigned to the jurisdiction of the foreman of Water Service Gang No. 1, whose headquarters are at San Francisco, approximately 248 miles from San Luis Obispo.

On of the mechanics remaining at San Luis Obispo, (Water Service Mechanic Donelson) was thereafter required to assume the duties and responsibilities of a foreman in addition to his regular duties but was only compensated at the mechanic's rate of pay.

The Agreement in effect between the two parties to this dispute dated January 1, 1953, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS:

1. There is in evidence an agreement (hereinafter called the current agreement) between the Carrier and its employees represented by the Petitioner, having effective date of January 1, 1953, a copy of which is on file with the Board and is hereby made a part of this submission.

2. Prior to May 16, 1943, no Water Service Sub-Department gang was employed at San Luis Obispo. However, due to a substantial increase in the volume of traffic at that time occasioned by World War II, the need for a Water Service Sub-department gang to maintain fuel and water facilities for servicing steam locomotives arose and, accordingly, one was established, with foreman, on that date.

The transition from steam to diesel power in the territory east of Salinas (which included San Luis Obispo) resulted in changed maintenance requirements in this territory. Among other things, it was determined that the Water Service Sub-Department gang was no longer needed at San Luis Obispo to perform maintenance work at that point, and it was accordingly discontinued. However, it developed that there was sufficient maintenance work remaining at San Luis Obispo to require the services of three Water Service Sub-Department mechanics, who were retained at that point subsequent to November 19, 1957, to perform any maintenance work required. Instructions as to work to be performed by said mechanics are obtained by them by telephone from foreman and/or supervisor of water service and fuel at San Francisco. It was customary, in most instances, though not mandatory, for Water Service Mechanic W. H. Donelson (Claimant in this case) to receive these instructions over the telephone and pass them on to the other water service mechanics with whom he worked, in some instances all three mechanics working together, and in others, each mechanic working alone, depending upon the work to be performed. Also, Mechanic Donelson, as a matter of convenience to all concerned, entered his own time, as well as that of the two other mechanics, on a sheet provided for that purpose. He at no time performed the work of a foreman, nor was he instructed to do so.

3. By letter dated January 26, 1961 (Carrier's Exhibit A), Petitioner's Division Chairman submitted to Carrier's Division Superintendent claim on behalf of a Water Service Sub-Department Mechanic W. H. Donelson (hereinafter referred to as the Claimant) that he "... be paid the difference in water service mechanic's rate of pay and water service foreman's rate of pay for a period of (60) days prior to this time and until such time as he is relieved of these duties while being paid as a water service mechanic." By letter dated January 31, 1961 (Carrier's Exhibit B), Division Superintendent denied the claim.

By letter dated March 28, 1961 (Carrier's Exhibit C), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, who also denied the claim by his letter of June 26, 1961 (Carrier's Exhibit D).

(Exhibits not reproduced.)

OPINION OF BOARD: Following the abolishment of the position of Water Service Foreman, and the Water Service Gang No. 2 at San Luis

Obispo, California on November 18, 1958, the Carrier assigned the three Water Service Mechanics in the abolished gang to the supervision of the regular assigned Foreman of Water Service Gang No. 1 headquartered at San Francisco, California, approximately 248 miles away. Water Service Mechanic Donelson was given the task of relaying instructions telephoned to San Luis Obispo from San Francisco to the other two Water Service Mechanics, as well as keeping the time rolls for himself and the others.

The Organization filed the instant claim asserting that Donelson was in fact functioning as Foreman, supervising the local Water Service Mechanics, and thus under Rule 54 of the parties Agreement was entitled to the foreman's rate of pay for being required to fill the place of the Foreman.

The Carrier asserts that it abolished the position of Foreman because there was not sufficient work for such position, that the relaying of messages and keeping of time records were non-supervisory duties, and that thus this can not be construed as a reestablishment or continuation of the Foreman's position.

It has been well established by this Board that the Carrier has the right to abolish positions if the need for them has been eliminated. It has been held that supervision need not be exercised at the actual site of operations. (Award 12310 (Wolf) and 12415 (Coburn).)

The Organization has not met the burden on proving that the grievant had in fact performed Foreman's functions. The mere relaying of instructions from an absent Foreman does not convert the conveyor of such instructions into a supervisor (Award 12350 (West)), nor does the keeping of work records of itself indicate the Claimant actually supervised the work of the other Water Service Mechanics (Award 13765 (Weston)).

Accordingly, we find that the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereof, 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 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 12th day of October 1966.

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