

**Award No. 15922**  
**Docket No. MW-14832**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Edward A. Lynch, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
**ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement beginning on February 15, 1962, when it abolished the positions of night assistant track foremen at Gary Mill Yard and thereafter assigned the work of said positions to track laborers. (Carrier's File VM-7-62)

(2) (a) Night Assistant Track Foremen B. Labenek, M. Gutierrez and P. Puentes be reimbursed for all monetary loss each has sustained or will sustain as the result of the violation referred to in Part (1) of this claim.

(b) Track Laborers C. Turner, L. Smythe, W. Elliot and/or their successors each be allowed the difference between what they were paid at track laborer's rate of pay and what they should have been paid at the night assistant track foreman's rate for each day beginning with and subsequent to February 15, 1962, that they were or will be assigned to perform assistant track foreman's work.

(3) A joint check of the Carrier's records shall be made to accurately determine the employees to whom claims should be paid and the amount due each.

**EMPLOYEES' STATEMENT OF FACTS:** For many years prior to February 5, 1962, the Carrier maintained positions of night assistant foreman at the Gary Mill Yard, Gary, Indiana. Said positions were initially established and subsequently maintained principally for the purpose of having a Track Sub-Department employee available at a specific location to receive telephone messages from employees of the U.S. Steel Corporation or from the Carrier's employees regarding track repair work which was immediately needed and to thereafter relay such messages to the Track Foreman. Immediately preceding the aforementioned date, said positions were assigned as follows:

<b>Assigned Hours</b>	<b>Occupant</b>
4:00 P. M. to 12 Midnight	B. Labenek
12 Midnight to 8:00 A. M.	M. Gutierrez
Relief - 2 days each shift	P. Puentes

make reports, including personal injury reports, necessary in connection with such supervision.

\* \* \* \* \*

It is further agreed that no claim will be presented on behalf of any foreman due to night assistant foremen making reports, having called or calling out or having worked or working five (5) or less employees.

It is further agreed that upon the signing of this supplemental agreement the Brotherhood of Maintenance of Way Employees will withdraw all claims previously made in connection with relief night assistant foremen. This agreement to be effective July 15, 1948.

FOR THE BROTHERHOOD  
OF MAINTENANCE OF  
WAY EMPLOYEES

/s/ John J. Berta  
General Chairman

Approved:

/s/ C. E. Crook  
Vice President

FOR THE ELGIN, JOLIET  
AND EASTERN RAILWAY  
COMPANY

/s/ F. G. Campbell  
Chief Engineer

Approved:

/s/ S. O. Rentschler  
Vice President

Joliet, Illinois, July 15, 1948"

**OPINION OF BOARD:** In describing the creation of the jobs initially held by claimants, the Carrier describes their evolution in this language:

"For a while thereafter, Carrier left the involved night assistant foremen (in addition to the new gangs) as troubleshooters; however, it soon developed that this new operating formula provided such up to date service and such flexibility that the necessity for these night assistant track foreman positions completely disappeared. On-duty gang foremen on the afternoon and night shifts, for the most part, were able to handle all the trouble and emergency calls and/or situations."

Carrier then states that all the involved night assistant foremen were doing after October 1, 1961 was "answering the telephone and relaying messages."

Carrier states there was more than one gang on the afternoon shift, and one of these was given the primary responsibility of attending to trouble and emergency calls, and the secondary responsibility of light or non-priority programmed work.

Carrier, by Bulletin Order 2962, abolished Assistant Track Foreman B. Labenek's staggered afternoon position, Assistant Track Foreman M. Gutierrez's staggered night position, and Assistant Track Foreman P. Puentes' relief position, effective February 15, 1962.

This Carrier had, beginning October 1, 1961, increased its track maintenance forces and went to a twenty-one (21) track, seven (7) day a week track maintenance and construction program at Gary Mill.

A consequence was that all positions except those of the night shift gang and the night assistant track foremen were abolished in setting up this operation and the new gangs were built or were molded around the night gang. Staggered and relief positions were held to the mere minimum.

Carrier states that for a while thereafter it left the involved night assistant foremen on (in addition to the new gangs) as trouble shooters; "however, it soon developed that this new operating formula provided such up to date service and such flexibility that the necessity for these night assistant track foremen positions completely disappeared."

"All the involved night assistant foremen were doing, after October 1, 1961," Carrier states, "was answering the telephone and relaying messages."

Obviously, answering the telephone and relaying messages are items of work which are peculiar to some crafts, but exclusive to none.

Carrier states that when it abolished these jobs, it "did exactly . . . what, since time immemorial, always had been done on the day shift without complaint from the Organization."

It being a fact that Carrier originally created the night assistant foremen positions without consultation with the Organization, it also had the right to abolish the positions, without consultation with the Organization when it determined that the necessity for these night assistant foremen positions disappeared.

We will follow Award 13139 (Engelstein) involving the same parties and deny this claim.

**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 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 31st day of October 1967.

Keenan Printing Co., Chicago, Ill.

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