

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

George S. Ives, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES****THE DELAWARE AND HUDSON RAILROAD CORP.**

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

(1) The Carrier violated the provisions of the effective Agreement when it did not allow Assistant Extra Gang Foreman Frank Pagano pay at the extra gang foreman's rate for work performed during the period October 28, 1965 to November 26, 1965. (System Case No. 10.66 MW)

(2) Assistant Extra Gang Foreman Frank Pagano be allowed the difference in pay between what he did receive at the assistant extra gang foreman's rate and what he should have received at the extra gang foreman's rate for work performed on various dates between October 28, 1965 and November 26, 1965.

EMPLOYEES' STATEMENT OF FACTS: During the period from October 28 to November 26, 1965, Assistant Extra Gang Foreman Frank Pagano performed the customary and traditional work of an extra gang foreman when he directed the activities of the operators of Spot Tamper PB-3 and Track Liner TL-5 and various other employees in performing the work of raising (surfacing) and lining track at various branch line locations and, in addition thereto, made various reports relating to said work.

During the above specified period, the claimant was **not** working with or under the supervision of any foreman.

For this service, the claimant was compensated at the assistant extra gang foreman's rate of pay.

The issue involved in the instant case is identical to the issue involved in the dispute adjudicated by this Division in Award 12971. Although the Carrier agreed to settle twenty-eight (28) similar claims on the basis of the decision of this Division in Award 12971, it would not agree to a similar settlement with respect to the instant claim.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: During the period of time covered by this dispute, claimant Frank Pagano was assigned as an Assistant Extra Gang Foreman in Extra Gang No. 308, with headquarters at Saratoga, New York. Effective October 28, 1965, claimant Pagano was assigned by his Foreman to work with certain members of the Gang in utilizing track maintenance equipment in maintaining track structure in and around Saratoga and Glens Falls, New York, points within the assigned limits of responsibility of Extra Gang No. 308.

During the period of this claim, the personnel assigned to Extra Gang No. 308 consisted of Extra Gang Foreman Henry J. Catone, claimant Assistant Extra Gang Foreman Pagano, and seven trackmen.

OPINION OF BOARD: The fundamental issues involved in this case are the same as those considered in our Award No. 16039, which arose out of a similar dispute between these parties under the same Agreement. Accordingly, we find Award No. 16039 controlling in this case, despite variations in dates, names and locations, which do not warrant repetitive discussion.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1968.

**CARRIER MEMBERS' DISSENT TO AWARDS 16039,
16040, 16041, 16042, 16043, 16044, 16045, 16046, 16047,
16048, 16049, 16050 and 16051, DOCKETS MW-16541,
MW-16594, MW-16595, MW-16596, MW-16597, MW-16598,
MW-16599, MW-16600, MW-16601, MW-16602, MW-16730,
MW-16731 and MW-16732.**

For the same reasons that are fully and specifically enunciated in Carrier Members' dissent to Awards 15804 and 15805, Dockets MW-16108 and MW-16109, which are, by reference, incorporated herein, we dissent to these Awards.

**R. E. Black
P. C. Carter
W. B. Jones
G. L. Naylor
G. C. White**

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