Award No. 19014
Docket No. MW-15696

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

---

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when, beginning on May 22, 1964, it relieved Section Laborer Robert T. Wagner of flagging duties in connection with the construction of a viaduct over the Carrier's track in the vicinity of Omaha, Nebraska, and thereafter assigned said duties to employes (yard switchmen) outside the scope of the Agreement. (Carrier's File M-1012-64).

(2) Section Laborer Robert T. Wagner now be reimbursed for all wage loss resulting from the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: During the construction of a viaduct over the Carrier's track in the vicinity of Omaha, Nebraska, it became necessary for the Carrier to provide flag protection for equipment crossing over and working near the track. This flagging work principally consisted of warning equipment operators when a train was approaching in order that they would not cross over or foul the track. The Carrier has acknowledged that work of this nature is the customary and traditional work of maintenance of way employes. Consequently, beginning on April 14, 1964, the Claimant was assigned to perform the necessary flagging duties and he continued to do so until the close of work on May 21, 1964.

Beginning on May 22, 1964, a terminal switchman (trainman), who holds no seniority under the agreement the Carrier has with this organization, was assigned to perform the flagging duties.

Although the claimant has continued to perform other duties in the gang assigned to Section R B 1, he has been deprived of overtime and rest day work that he would have performed had he not been improperly deprived of the subject flagging duties.

Claim was timely and properly presented and handled 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 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:** Claimant in this case is a section laborer holding seniority as such in the Omaha, Nebraska Terminal with a seniority date of March 8, 1954. He does not hold seniority in any other grade, group or class, as for example, crossing flagman. His seniority, therefore, is confined by the provisions of Rule 5(e) to that of section laborer on the roadmaster's territory.

During the period involved in the claim, Federal and State contractors were engaged in constructing a highway bridge to carry Interstate Highway No. 80 over the property of the respondent carrier. The area over which the Interstate Highway No. 80 bridge was being constructed is part of Carrier's South Omaha Freight Yard. At the location where the bridge was being constructed, a temporary crossing was installed across the yard tracks for the purpose of permitting the contractors' equipment to move back and forth. It was not a public crossing, because for one thing, it was in a yard not accessible to the public, and also it was used solely by the contractors' forces who were building the piers for the overhead highway.

Flagging protection in yards, such as this, is performed by yardmen or switchmen represented by the Brotherhood of Railroad Trainmen, and employes of that craft and class were used in this case.

The schedule of rules agreement between the parties, effective September 1, 1949, and amendments therto are by reference made a part of this submission.

**OPINION OF BOARD:** During the construction of a viaduct over the tracks or the Carrier in the vicinity of Omaha, Nebraska, flag protection was provided by the Carrier for company construction equipment which crossed over, or was working near the track. The Carrier assigned claimant section laborer to perform said flagging April 14, 1964. He performed such duties until May 21, 1964. The Carrier assigned a terminal switchman (trainman) May 22, 1964, to perform this work.

The Organization asserts that the terminal switchman held no seniority rights under the Maintenance of Way Agreement and that this work which has been assigned to Maintenance of Way employes and it was therefore improper to subsequently assign the work to the terminal switchman.

This case involves a third party question. Disputes involving trainmen historically are assigned to the First Division. It is conceded that the notice required under **Transportation-Communication Employes Union vs. Union Pacific Railroad Co.**, 385 U.S. 157 (1966), has been given in this case.

The Carrier relies upon five separate defenses, one of which alleges that First Division Award No. 5607 determined this type work belonged to the trainmen. The Award cited by the Carrier was adopted April 22, 1941, and apparently the Carrier has abided by the order of that Award for over a quarter century. We are convinced that the issues settled by First Division Award No. 5607 are substantially the same issues presented in the case now before the Third Division. We specifically hold that it is our duty to consider the First Division Award as controlling precedent in this case.

The Organization alleges that the law set forth in the Union Pacific case applies only to disputes arising between crafts on the same division, i.e., intra division disputes. Although it is true that in the Union Pacific case both crafts were members of the same Division, we do not find that the language in that case precludes inter-division disputes from being resolved.

Therefore, we hold that this Division has jurisdiction and, in fact, a duty to recognize the awards of other Divisions, and further we find that First Division Award No. 5607 is controlling in this case and accordingly this Claim is denied.

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 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 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1972.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.