

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DENVER UNION TERMINAL RAILWAY**

STATEMENT OF CLAIM: "Claim of Employees' Committee; First: that the Carrier violated current agreement between the Carrier and the Brotherhood of Maintenance of Way Employees, by assigning J. N. McKnight, an official in the Signal Dept. to supervise the work of section laborers. Second: that Dan Roberts, the senior qualified employe in the Track Department be assigned to the position of yard section foreman at the rate of \$137.50 per month. Third: that Dan Roberts be paid the difference between what he has received as leadman and that which he would have received as foreman at the rate of \$137.50 per month since July 29th, 1938."

EMPLOYEES' STATEMENT OF FACTS: "Mr. J. N. McKnight, an official of the Carrier having no seniority rights in the Track Department and not coming within the scope of the agreement between the Carrier and the Brotherhood, is assigned in immediate charge as foreman of the section crew at the Denver Union Depot Terminal.

"An agreement bearing date of Oct. 1, 1930 is in effect between the parties which by reference is made a part of this Statement of Facts."

EMPLOYEES' POSITION: "We are quoting below several rules of the agreement in effect between the Denver Union Terminal Railway and the Brotherhood of Maintenance of Way Employees.

"Article I, Scope:

"These rules govern the hours of service and working conditions of all employes in the Maintenance of Way Department, including all the mechanics in their various crafts as well as all composite workers employed by the Denver Union Terminal Railway Company.

"They supersede all rules, practices, and working conditions in conflict therewith.

"It is understood and agreed that the Rules and Regulations shown on the back of the Terminal Company's time-table will apply to the employes covered by this agreement."

"Article V, Rule 11:

"Supervisory employes will be allowed time during regular working hours to do necessary clerical work in connection with their supervisory duties."

"Article II, Rule 11:

"Employes promoted above the rank of foreman, will have the right, if the job is abolished or dissatisfied, to return to his former classification, as provided in these rules."

2. That Mr. Roberts made application for and was subsequently placed on the job of Lead Workman under the provisions of Bulletin No. 218 of Oct. 24, 1935, with the knowledge that the job was a six day assignment and paid 43¢ (now 48¢) per hour.
3. That there has been no change in or addition to Mr. Roberts' duties from the day he was placed on the job up to the present time.
4. That we have never had in effect on this property a job designated as Section Foreman, and such position has been and is at this time superfluous, unwarranted, and not justified by service requirements.
5. That the organization has not mentioned any schedule rule which has been violated in this particular case.

"In conclusion the Carrier contends that:

1. Inasmuch as this job was placed in effect with the knowledge and consent of the organization, and
2. Was bulletined in accordance with their request, and
3. That Mr. Roberts by his bid of October 28, 1935, indicated he was willing to accept the rate of pay and conditions of the job, and
4. That Mr. Roberts does not, has not, and is not required to assume or perform any of the duties and responsibilities of a Section Foreman, he being given instructions as to what work to perform by Mr. McKnight, and
5. That there has been no change in the duties of this job since first established, and
6. That the organization has not specified any rule of the Agreement which has been violated in this claim, there is no justification for the case being before this Board.

"The Carrier further contends there is nothing in the current working agreement with the Maintenance of Way Organization which requires that we establish the position of Section Foreman. The plan of organization for the operation of the terminal is one that rests solely with the management and is a matter over which the Maintenance of Way Organization has no jurisdiction.

"Oral hearing is desired."

OPINION OF BOARD: The Board is without authority to say what supervisory duties an officer of the carrier may or may not perform. If the carrier desires to continue work comprising the duties of a Section Foreman, such work comes under the provisions of agreement between the parties and should be assigned to an employe covered thereby. The claim of Dan Roberts for pay at Section Foreman's rate of \$137.50 per month cannot be sustained as the record shows the parties have never negotiated a rate of pay for Section Foreman and the Board is without authority to fix such a rate. Such question is one for negotiation and agreement between the parties.

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 has jurisdiction over the dispute involved herein; and

That claim is to be disposed of in accord with above opinion.

AWARD

Claim is to be disposed of in accord with above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1939.