

Award No. 2992

Docket No. MW-2973

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mart J. O'Malley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that John Grummitt, B & B Carpenter, Illinois Division, who during the period from March 29 to April 29, 1944, inclusive, was assigned and required to supervise several B & B employes at Oelwein, Iowa, reporting directly to the Division Engineer, shall be paid the difference between what he received as a B & B Carpenter and that which he should have received as a B & B Foreman from March 29 to April 29, 1944, inclusive.

EMPLOYES' STATEMENT OF FACTS: John Grummitt is regularly assigned as a bridge and building carpenter with the gang in charge of Foreman Struckman with headquarters at Oelwein, Iowa. During the period from March 29 to April 29, 1944, inclusive, the bridge and building gang in charge of Foreman Struckman was divided. A part of the gang was engaged in connection with certain work at Dyersville, some 35 miles east of Oelwein, in charge of Foreman Struckman. John Grummitt was left at the headquarters at Oelwein in charge of 3 or 4 bridge and building employes performing various work, such as repairing roundhouse doors, etc.

During the period in question, John Grummitt reported direct to the Division Engineer and received instructions from him pertaining to work to be performed, kept time for himself and other bridge and building employes working under his immediate supervision, submitted a report on material used in connection with the work, etc.

POSITION OF EMPLOYES: Rules 36 and 51 (a) of Agreement in effect between the Carrier and the Brotherhood read:

RULE 36:

"An employe required to perform more than one class of work during his day's assignment will be allowed the rate applicable to each class of work for the time actually engaged in each class of work, except that an employe temporarily assigned to a lower rated position will not have his rate of pay reduced. Assisting a higher rated employe for less than four (4) hours will not constitute an assignment to a higher rate."

RULE 51 (a):

"An employe directing the work of men and reporting to officials of the Railroad, shall be classified as foremen."

As will be observed, Rule 36 provides that an employe required to perform work in a higher rated position will be allowed a rate applicable to the position or the class of work performed. Rule 51 (a) provides that an employe directing the work of men and reporting to officials of the railroad shall be classified as

not necessary to have a foreman assigned to direct the work, and none was appointed.

The only thing Grummitt did was to turn in the time for himself and the three helpers. He was not instructed to do this, but voluntarily agreed with the others to do so. This is not unusual and has no bearing whatsoever on the claim, as he was not instructed to act as foreman.

The only work performed by Mr. Grummitt and the helpers was to repair some roundhouse doors and make a few concrete whistling posts, and certainly such work as that did not require the constant supervision of a foreman. The complainant in this case was not held responsible for the work performed by any of the helpers other than his own work. In other words, the same conditions prevailed that would have prevailed if the foreman was in charge of these men. Therefore, there is no merit in his claim for assistant foreman's rate of pay.

It is common practice on this Railway, as well as on other railroads, to occasionally split up bridge gangs to do certain work at different points on their respective divisions on the railroad that does not require the service of a foreman. For example, we furnish two card passes—one for the entire gang and one for part of the gang—so they can be split up for such purposes.

The Board's attention is directed to the fact that no rules of the agreement were violated; neither has the Carrier been charged with violation of any rules of the agreement.

In view of the facts and circumstances set out herein, it is the position of the Carrier there is no merit in this claim and respectfully requests the Board to so decide.

OPINION OF BOARD: The Organization processed a claim on behalf of John Grummitt, a B. & O. Carpenter, wherein it is asserted that from March 29 to April 29, 1944, this man acted as Foreman and is entitled to be compensated in that amount which is the difference between what he received as a Carpenter and what he should have received as a Foreman.

The Employees submitted some evidence to the effect that the gang on which Claimant was employed, was divided and the regular Foreman, C. L. Struckman, together with most of his gang proceeded to distant point, leaving Claimant and three helpers at Oelwein for the period of one month.

Claimant wrote a letter to the effect that he did considerable work over this period of one month. It is therein stated that no directions for doing this work were given by the Foreman, and that Claimant had been instructed to make out time slips for himself and his helpers; to report material used; and to carry out the instructions of the Division Engineer. This statement likewise shows that Claimant picked up the mail and performed work requested by the Division Engineer; and that he reported when the work was completed.

To meet this the Carrier asserts in its statement that the Foreman outlined all this work either before he left originally, or when he returned on week-end visits. However, no statement or letter from the Division Engineer, or from the regular Foreman has been placed in the record and a mere assertion is entitled to little, if any, weight.

The claim is based on a violation of Rules 36 and 51 (a). In the former rule, it is agreed that an employe required to perform more than one class of work will be allowed the applicable rate for each class for the time actually spent thereon. In the latter rule it is agreed that "An employe directing the work of men and reporting to officials of the Railroad, shall be classified as foreman."

While there is no evidence that the Claimant was appointed Foreman or Assistant Foreman, there is evidence that he supervised three men, made reports of time worked and material used on various items of work, reports of which were submitted to officials of the Carrier and accepted by them. Under such circumstances this Claimant must, for the purpose of pay, during the named

period, be classed as a Foreman within the terms of Rule 51 (a) and Rule 36. See Award 1658.

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 Employee involved in this dispute are respectively carrier and employee 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 Carrier violated Rules 36 and 51 (a) as alleged, and Claimant was during the period alleged, March 29 to April 29, 1944, performing the duties of a Foreman.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 26th day of November, 1945.