

Award No. 3291

Docket No. MW-3302

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

Joseph B. Fleming and Aaron Colnon, Trustees

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that C. J. Nelson, Section Foreman, Chicago Division, shall be paid the difference between what he received at section foreman's rate of pay, \$160.60 per month, and that which he should have received at extra gang foreman's rate of \$170.60 per month, during the period he was assigned in charge of an extra gang from on or about July 1, 1943 until relieved from that assignment.

EMPLOYES' STATEMENT OF FACTS: C. J. Nelson was regularly assigned as section foreman of Section 8, Burr Oak Yard, at the salary of \$160.60 per month. On or about July 1, 1943 Nelson was placed in charge of an extra section gang comprised of from thirty to sixty laborers who were paid at section laborer's rate of pay. This extra section gang was assigned to rail renewals and surfacing out of face at various points on the Chicago Terminal Division. A camp or boarding outfit was provided to house and board the laborers in the extra section gang which outfit was moved from point to point as work progressed. One of the laborers originally employed on Section 8 was assigned as assistant foreman at the rate of \$142.60 and placed in charge of Section 8, Burr Oak Yard, reporting directly to the Roadmaster.

Agreement effective May 1, 1938 between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: As stated in Employees' Statement of Facts, at the time this claim arose C. J. Nelson was assigned as section foreman on Section 8, Burr Oak Yard. Ordinarily the section crew on Section 8, Burr Oak, would consist of a foreman and from eight to ten laborers. It appears that the Carrier was in need of a larger force of men for assign-

ment to rail relaying and general maintenance work at various points on the Chicago Terminal Division. However, instead of organizing and assigning an extra gang, as the Carrier would do when in need of additional forces, the Carrier enlarged section gang No. 8 in charge of Foreman Nelson to from thirty to sixty men. The extra section men thus engaged were housed and boarded in outfit cars and were moved from point to point where work was required and progressed on the division. In substance the enlarged section crew was split. Some from thirty to sixty men thereof in charge of

POSITION OF CARRIER: It is the position of the employes that Section Foreman Nelson is, in fact, an extra gang foreman and that his rate of pay should be that applying to an extra gang foreman, i.e. \$170.60 instead of section foreman rate of \$160.60. They base their claim on number of men assigned to Mr. Nelson's gang and class of work performed.

It is the position of the Carrier that Mr. Nelson and his gang perform only ordinary maintenance track work, and we can find nothing in the agreement that limits a section gang to any particular number of laborers. The gang does average between 27 and 36 men, but this is due entirely to the fact that they are boarded at one camp at Burr Oak.

Rule 24 of the Maintenance of Way Agreement of May 1, 1938 provides a good picture of an extra gang's duties, i.e.—

"Laborers in seasonal extra gangs, engaged in work not customarily done by section or maintenance gangs, such as reballasting and rail relaying, including tie renewals in connection therewith, bank widening, grade and line changes, or emergency work occasioned by inclement weather, will be paid . . ."

This gang was not and is not engaged in rebuilding or reconstruction of any track on the territory involved; Section Foreman Nelson and his gang's duties were and are those normally required of section gangs, i.e., to see that the track is in good line and surface and properly spiked; that it is in true gauge; that the cross ties are properly spaced, lined and tamped; that the proper slopes and ditches are maintained, renewing ties and defective rail when necessary, maintaining frogs, switches, etc.

Mr. Nelson and his gang were and are not engaged in the character of work indicated in Rule 24, and, therefore, his position is not that of an extra gang foreman.

We submit the claim has no merit and it should be denied.

OPINION OF BOARD: The factual situation here is not too clear in detail. It appears that the Carrier created a large force of men to do work in its yard. They were housed and fed in a fixed location. Section Foreman Nelson was placed in charge. Nelson was regularly assigned as Foreman of Section 8. It appears that this large body of men were divided into two groups. A small number of men, under an Assistant Foreman worked in Section 8. A larger body of men worked throughout the yards in several sections, other than Section 8, under Foreman Nelson, and Nelson had supervisory charge of the crew in Section 8.

The question is, should Foreman Nelson be paid at a section foreman's rate of pay or at extra gang foreman's rate of pay? Neither party has furnished anything like an accurate statement of the distinction between a section gang and an extra gang, nor the distinction between the duties of a foreman of the two types of gangs of men.

We have searched this record to find a rational basis for an answer to the question presented. The question is as to Foreman Nelson's duties and rights, not those of the men who worked under him. As we see it, the number of men, in the crew or crews, the location of the place where the men are housed and fed and the length of time that this crew or these crews were in existence are not decisive factors. The decisive factor, as we see it, is the nature of the work that was done and where it was done under the foremanship of Mr. Nelson.

We find it difficult to distinguish as to the nature of the work so that we can with assurance say that it was or was not regular or extra gang work. It was work. It seems to us that the "where" the work was done is the controlling element. Ordinarily, we take it, a section foreman's job is limited to the section where he works. That is his normal territory and responsibility. His rate of pay as an assigned section foreman contemplates the duties performed in one section. Here it appears that Nelson's Section 8

was handled by an assistant foreman. Nelson and the crew under him ranged throughout several sections and did substantial amounts of work in several sections. This work in sections other than Nelson's Section 8 was not an occasional or emergency crossing of lines, but the regular procedure. Nelson performed duties in several sections involving a greater responsibility and heavier duties than in one section. The pay of an "extra gang foreman" is larger than that of a section foreman—obviously because of greater duties and responsibilities. It seems to us that Nelson regularly performed duties over and above his duties as a section foreman and that in fact, but not in name, he was an extra gang foreman.

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 Foreman Nelson should be paid at the extra gang foreman's rate for the period of time he was performing the duties involved.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of September, 1946

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

INTERPRETATION NO. 1 TO AWARD NO. 3291

DOCKET MW-3302

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way Employees.

NAME OF CARRIER: The Chicago, Rock Island and Pacific Railroad Company.

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

When called upon to make the award effective the carrier took the position that on the "dates foreman Nelson and his gang were confined solely to Section 3 his own section foreman assignment, he is not entitled to extra gang foreman rate," and that it was required to pay the extra gang foreman rate only for those duties "which were performed off of foreman Nelson's regular Section 8." This is based upon the language of the opinion that "It seems to us that the 'where' the work was done is the controlling element. Ordinarily, we take it, a section foreman's job is limited to the section where he works. That is his normal territory and responsibility. His rate of pay as an assigned section foreman contemplates the duties performed in one section. * * * Nelson performed duties in several sections involving a greater responsibility and heavier duties than in one section." (The emphasis is supplied by the carrier.) The organization took the position that foreman Nelson should "be paid at the rate of pay applicable to extra gang foreman for all of the time that he was in charge of the large gang, regardless of where that gang worked, whether it worked on the territory comprising Section 8, or on territories comprising other sections."

The carrier refused to recede from its position and the organization requested this interpretation.

The employees' construction of the opinion and resulting award is proper.

The "where" that foreman Nelson performed this work was in an area made up of several sections. Section 8 was an integral part of that area. In that larger area he performed the work involving the greater responsibilities and heavier duties. The award was intended to cover and did cover the work performed by Mr. Nelson whether within or without Section 8, for all of the time he was in charge of the large gang within the period covered by the claim.

Referee Robert G. Simmons, who sat with the Division as a Member when Award No. 3291 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of February, 1947.