

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) That Section Foreman E. E. Bracy, Pana, Illinois, who was used by instruction of the Carrier to pilot Baltimore & Ohio Railroad locomotives over Illinois Central tracks at Pana, which class of service is covered by agreement between the Carrier and The Order of Railroad Conductors, shall be paid for such service, same as if a conductor had been called;

(2) That E. E. Bracy shall, under the application of Articles 54 and 19 of agreement between the Carrier and The Order of Railroad Conductors, be paid for one hundred (100) miles at Conductor's rate for piloting a Baltimore & Ohio Railroad locomotive at Pana on November 16, 1944, and for each time subsequent thereto that he was called upon to pilot Baltimore & Ohio locomotives.

EMPLOYEES' STATEMENT OF FACTS: On November 26, 1944 and on subsequent dates, Section Foreman E. E. Bracy was called during overtime hours for the purpose of boarding a Baltimore & Ohio Railroad locomotive and pilot such locomotive over a certain portion of the Illinois Central Railroad mainline to a turning wye at Pana, Illinois, and after the locomotive had been turned, piloting it back over the Illinois Central Railroad mainline to the Baltimore & Ohio Railroad tracks.

Agreement effective September 1, 1934 between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The Baltimore & Ohio Railroad crosses the Illinois Central Railroad at Pana, Illinois. Occasionally Baltimore & Ohio Railroad locomotives are turned on a wye located on the Illinois Central Railroad. In order for a Baltimore & Ohio Railroad locomotive to turn on that wye, it must proceed over the Illinois Central Railroad tracks from the tower where the Baltimore & Ohio and the Illinois Central Railroads intersect to the point where the wye is located. When thus proceeding over the Illinois Central Railroad from said tower to the wye and back, the Baltimore & Ohio Railroad locomotive is piloted by an Illinois Central employe who is familiar with the Illinois Central tracks and its traffic rules.

Piloting of trains and/or locomotives is a class of service governed and payable under the application of agreement between the Illinois Central Railroad and The Order of Railroad Conductors. Articles 19, 20, 39(a) (3), and 54 of that agreement read:

1. The claim is for a rate of pay not provided in the governing agreement and is, therefore, not a request for an interpretation, such as the National Railroad Adjustment Board may hear and decide, but is a matter for negotiation between the parties or for Mediation as provided in the Act.
2. The Third Division has no authority to hear and decide a dispute based on an agreement covering a craft and class of employes, the jurisdiction of which is given the First Division. The First Division has no authority to hear and decide a dispute that is not progressed by the duly selected and authorized representative of the craft and class embraced by the agreement under which the claim is asserted.
3. Claimant cites no violation of the agreement with his craft and class.
4. Claimant is not qualified as a conductor-pilot under the provisions of the Transportation Rules of this company and the agreement with the Order of Railroad Conductors.
5. In order to sustain the employes' claim this Board will have to hold that pilot service is exclusively the work of conductors and will then have to show that the claimant is a conductor as embraced by the schedule governing that craft. Carrier maintains this Division is without jurisdiction over this class of service and employe.
6. There is no merit to the claim under the agreement between the Brotherhood of Maintenance of Way Employes and this Carrier as the claimant was compensated in accord with the provisions of this agreement to which he is amenable.

OPINION OF BOARD: On November 16, 1944, and on subsequent dates, Section Foreman E. E. Bracy was called during overtime hours to pilot certain Baltimore and Ohio Railroad locomotives over a portion of Carrier's line to a turning wye at Pana, Illinois, and return, for which he was compensated as a Section Foreman. The Organization contends he should have been paid at a Conductor's rate.

Carrier contends that if the basis of the claim has been correctly stated by the Organization, this Division has no jurisdiction to hear it because it involves the interpretation of the Conductors' Agreement, a matter within the jurisdiction of the First Division under the provisions of the Railway Labor Act. We cannot concur in this view. Claimant was employed as a Section Foreman, a position under the Maintenance of Way Agreement. This is the only agreement to which he is a party in his capacity as Section Foreman. It is fundamental that one must rely upon his own agreement in support of a claim based on a contract violation. One has no rights under contracts to which he is not a party except as they may become so by the provisions of his own agreement. In the present case, Claimant was directed to perform higher rated work falling outside the scope of the Maintenance of Way Agreement. When an employe is directed to perform service within the scope of another agreement, he is entitled to compensation at the rate of such position. Under his own agreement, therefore, such higher rate is a proper one. The fact that it may be necessary to produce other evidence to determine that rate, even if it required the examination of the Conductors' Agreement or wage schedule, does not operate to remove the claim from the jurisdiction of the Division authorized to interpret agreements covering the class of work he was assigned to perform. The right of this Claimant to an award must be established by his own agreement. If he is unable to do that, he has no claim. It appears to have been a traditional practice when an employe is temporarily assigned to the work of another class coming under the provisions of another agreement to compensate him at the rate paid the position to which temporarily assigned, if higher than his own pay. Many awards of this Division support this principle. See Awards 3299, 3117 and 2703. The failure to pay the higher rate is a violation of the Maintenance of Way Agreement and is a proper matter for the consideration of the Third Division.

The contention of the Carrier that piloting is within the scope rule of the Maintenance of Way Agreement is without merit. Piloting is work ordinarily performed by the Operating Department and does not naturally fall within the work performed by Maintenance of Way employes.

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 parties waived oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of March, 1947.