

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Adolph E. Wenke, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE DELAWARE AND HUDSON RAILROAD CORPORATION**

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

(1) That the Carrier violated the provisions of the current agreement between the Delaware & Hudson Railroad Corporation and the Brotherhood of Maintenance of Way Employes when it did not assign J. Spangenburg to operate Ditcher Number 1 at Mohawk for twelve (12) hours per day July 21, 1946 to July 24, 1946, both dates inclusive;

(2) That John Spangenburg be allowed the difference in pay between what he did receive and what he would have received had he been assigned to operate Ditcher Number 1 at Mohawk for twelve (12) hours per day during the period July 21, 1946 to July 24, 1946, both dates inclusive.

**EMPLOYEES' STATEMENT OF FACTS:** During the period July 21, 1946 to July 24, 1946, inclusive, the coaling plant at Mohawk, New York broke down and it became necessary for the management to find some other method of coaling its engines.

Ditcher Number 1, regularly assigned to the Maintenance of Way Department, and regularly operated by an employe covered by the Scope of the Carrier's Agreement with the Brotherhood of Maintenance of Way Employes was assigned to coal these engines at Mohawk.

Because of the fact that it was necessary to have this machine available to coal engines 24 hours per day, the operator regularly assigned to this machine was required to work 12 hours per day and the Carrier then assigned an employe having no seniority in the Maintenance of Way Department to operate this machine during the remaining 12 hours of each 24 hour period. The Carrier's handling in this matter resulted in Fireman Spangenburg suffering a wage loss of a difference in pay between Ditcher Engineer's rate of \$275.56 per month and his rate of \$251.58 per month.

Scope Rules 2, 3a, 3c, 27a, and 27b of the effective agreement provide as follows:

"Rule 2. Rights of employes to positions shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail."

"Rule 3(a). Seniority rights of employes, except trackmen and laborers, are confined to the sub-department and class in which employed and to the division on which they are located.

Brotherhood of Maintenance of Way Employees is conclusive proof that both the Carrier and the Employees were fully satisfied that this work should be performed by employees of the Maintenance of Way Department.

The Employees at this time again desire to call attention to the fact that your Board in rendering Awards 2300 and 2301 sustained the Employees' position and that no place in either the Carrier's submission or the award of the Board was there any question raised as to the right of Ditcher Fireman Lawrence J. Corsall to perform the work of ditcher engineer on the dates specified in the claim.

The Employees are definitely of the opinion that there can be no question but that the work here involved is work which should be performed by employees represented by the Brotherhood of Maintenance of Way Employees.

The Employees are also of the opinion that when the Carrier by unilateral action decided to and did permit an employee having no seniority in the Maintenance of Way Department to perform this work, that it deprived Ditcher Fireman J. Spangenburg of wages to which he was entitled by reason of his seniority.

Rules 2 and 27(a) of the effective agreement quoted above specifically provide for the manner in which vacancies are to be filled.

In the instant case a vacancy of ditcher engineer existed on June 5, 1946. Such vacancy was not filled in accordance with the provisions of the rules above referred to but was rather filled by the Carrier assigning another of its employees to perform this work.

The Employees contend that the Carrier's action has deprived the claimant of wages to which he was entitled and that to be in accordance with the provisions of the effective agreement he should be now allowed a wage adjustment in accordance with part 2 of the instant case.

The Employees contend that their claim is just and reasonable and respectfully request that it be allowed.

**CARRIER'S STATEMENT OF FACTS:** During the period July 21, 1946 to July 24, 1946, a locomotive coaling crane of the Motive Power Department at Mohawk became defective, necessitating the use in emergency of a Maintenance of Way ditcher to coal engines while the Motive Power crane was being repaired.

The regular operator of the ditcher accompanied the machine and was assigned to coal engines for a twelve (12) hour trick and the regular operator of the defective Motive Power crane was assigned to operate the ditcher to coal engines on the other twelve (12) hour trick.

**POSITION OF CARRIER:** The facts and circumstances, with the exception of dates involved, are identical to those in Case No. 3.47 M.W. which is also being submitted to the Third Division, National Railroad Adjustment Board. The Carrier submits the argument and evidence presented in Case No. 3.47 M.W. to support its position in this case.

**OPINION OF BOARD:** The System Committee of the Brotherhood contends Carrier violated the provisions of their agreement when it did not assign Ditcher Fireman J. Spangenburg to operate Ditcher Number 1 at Mohawk, N. Y., for 12 hours per day from July 21 to July 24, 1946, inclusive, but assigned someone not under the agreement to do so. Because thereof it asks that Spangenburg be allowed the difference in pay between what he did receive and what he would have received had he been assigned to operate the Ditcher during this period.

The record discloses that during the period from July 21 to July 24, 1946, inclusive, a locomotive coaling crane of the Motive Power Department at Mohawk, N. Y., became defective. The emergency situation necessitated the use of Maintenance of Way Ditcher Number 1 to coal engines while the Motive Power crane was being repaired. The regular operator of the Ditcher

accompanied the machine and operated it to coal engines for a twelve hour period daily and the regular operator of the defective Motive Power crane operated the Ditcher to coal engines the other twelve hours, it being necessary to have the Ditcher available for service twenty-four hours a day.

Ditcher Number 1 is equipment regularly assigned to the Maintenance of Way Department and regularly operated by an employee thereunder, the agreement including the position of Ditcher Engineer and Ditcher Fireman.

It is the position of the System Committee that the work of operating Ditcher Number 1 is work that should be performed by employees covered under the scope of the Carrier's agreement with the Brotherhood. This would be true when the machine is used for the purpose of performing work within the scope of the Maintenance of Way Employees' Agreement, such as ditching the Carrier's right-of-way, the work for which this machine is intended.

But the work of coaling engines is not covered by the scope of the Maintenance of Way Employees' Agreement. It is under the scope of Laborers in Carrier's agreement with the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers.

The fact that an emergency made it necessary to use equipment, which is ordinarily assigned to the Maintenance of Day Department, to perform work which is under the scope of another agreement does not shift the work and permit Maintenance of Way employees to operate the equipment in performing it.

We find the claim to be without merit and that it should be disallowed.

**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 the carrier did not violate the agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 12th day of September, 1949.