

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

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

(1) That the Carrier violated the agreement by not compensating Section Laborer A. F. Neilson, LaCrosse and River Division, at the Switch-tender's rate of pay during the period November 18 to December 19, 1947, inclusive;

(2) That the claimant be reimbursed for the difference in compensation received at Section Laborer's rate and what he should have received during the period referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On November 18, 1947, Section Laborer Arthur F. Neilson of Rio, Wisconsin was assigned to tend the temporary crossover switches at Wyocena, Wisconsin.

These switches were installed in order to run trains around the extra gang who were laying rail in this vicinity.

Neilson was stationed at the crossover, and a shanty was set up nearby, equipped with a telephone. Whenever it was necessary to use the crossover, the Agent-operator at Wyocena called Neilson on the phone and gave him the necessary instructions. Neilson would then set the switches for the use of trains, returning them to normal after the passage of the train. He would then contact the Agent by phone for subsequent instructions.

This arrangement remained in effect from November 18, 1947 to December 19, 1947. During this time Neilson worked eleven (11) and sometimes twelve (12) hours per day. He was compensated at the Section Laborer's rate of pay for the services rendered during this period.

The Employees have claimed that Neilson was performing the work of a switchtender and should have been so compensated.

Under date of January 24, 1948, General Chairman J. G. James wrote the Carrier's Superintendent Mr. Palmquist requesting that this claim be allowed.

Mr. Palmquist failed to make a reply. On this account a tracer was sent Mr. Palmquist under date of February 26, 1948. Under date of March 8,

"An employe required to fill the position of another employe receiving a higher rate of pay, shall be paid the rate of such position for the work day when the time so engaged is in excess of four (4) hours.

Except in case of force reduction, if an employe is required temporarily to fill the place of an employe receiving a lower rate, his rate will not be changed." (Emphasis supplied.)

It is the Carrier's contention that the above quoted rule was never intended to apply to positions outside the scope of the Maintenance of Way Agreement. However, even though the rule could be interpreted as being sufficiently broad to include work outside of the scope of the Maintenance of Way Agreement, the rule is not applicable in this dispute because, in accordance with the rule, the employe must be filling a position of another employe receiving a higher rate of pay in order to be entitled to the higher rate. The Claimant was not filling the position of another employe receiving a higher rate of pay (switchtender's position) because there was no switchtender's position in existence at Wyocena.

Each train that crossed over from the westward track to the eastward track, or from the eastward track to the westward track at Wyocena, Portage and East Rio was governed by train orders issued by the train dispatcher at LaCrosse. As previously stated, the entire responsibility of crossing trains over at Wyocena, Portage and East Rio rested with the train dispatcher at LaCrosse and the telegraphers at the three mentioned points.

The Claimant had nothing whatsoever to do with train orders; he was not required nor did he flag trains, his sole duty being to line the crossover switches when instructed by the telegrapher.

In conclusion, the Carrier contends that the claim of Section Laborer Neilson is not properly before or subject to a decision by this Division for the reason that it involves the interpretation and application of the Yardmen's Agreement and, therefore, should be dismissed.

However, in the event the Board decides to accept jurisdiction in this dispute we respectfully urge that the claim be denied for lack of merit.

(Exhibits not reproduced).

OPINION OF BOARD: From November 18, 1947 to December 19, 1947, Carrier was engaged in laying new rail between Portage, Wisconsin, and East Rio, Wisconsin, a distance of 15 miles. This section of Carrier's road was double tracked and the work required that trains crossover and run against traffic around the gang performing the work. The crossover switches at Wyocena are located about 1500 feet from the telegrapher's office. A temporary shelter was installed at the crossover switches and a temporary telephone installed. The work of throwing the crossover switches was assigned to claimant, a section laborer, to be performed under the direction of the telegrapher at Wyocena. The switches were lined for a crossover only upon the express order of the telegrapher by telephone and placed in normal position immediately following the passage of the train. Claimant contends that this was switchtender's work and claims compensation at switchtender's rate.

Carrier contends that the Third Division does not have jurisdiction of the claim for the reason that switchtenders on this property are covered by the Yardmen's Agreement and that the interpretation thereof belongs to the First Division of the Board. This contention is fully answered by Award 3489 and the reasoning therein contained. See also Awards 4139, 4511, 4528. The Carrier's claim that the Third Division is without jurisdiction has no merit.

Carrier contends that the work of throwing the crossover switches is not switchtender's work. Its contention is that it is work usually performed by trainmen, telegraphers and towermen. Carrier does not claim that it is

work belonging to section laborers but insists that it is proper for them to perform it. We think not. We know of no rule which gives the work of lining switches to a section laborer. The work is definitely not that of a section laborer.

Carrier asserts that it is not switchtender's work for the reason that switchtender's positions are not maintained outside of Chicago, Milwaukee and the Twin cities. We point out that it is not the place of performance that ordinarily determines the character of the work performed. It is the nature of the work itself. It seems axiomatic that the throwing of switches under the circumstances here shown is switchtender's work. The Carrier seems to take the position that it belongs to no particular craft and that it can properly be performed by several different crafts. We do not think it is illogical to say that an employe who devotes all of his time to throwing switches is a switchtender. Consequently, an affirmative award is in order.

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

The Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of March, 1950.