Award No. 5137
Docket No. MW-5097

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: (1) That the Carrier violated the Agreement by assigning Joseph Durkin as a Rail Grinder Machine Operator, detached, to perform service in Boston, Massachusetts, on the following dates: October 27, 28, 29, 30, 31, November 1, 3, 4, 5, 6, 7, 8, 10, 11, 14, 15, 17, 18, 19, 20, 24, 25, 26, 28, 1947;

(2) That Machine Operator Joseph Durkin be reimbursed at the rate of ten (10) cents per hour, eight (8) hours per day, for services performed during the dates mentioned in Part (1) of this claim while working as a Rail Grinder Machine Operator at Boston, Massachusetts.

EMPLOYES' STATEMENT OF FACTS: On October 27, 28, 29, 30 and 31, November 1, 3, 4, 5, 6, 7, 8, 10, 11, 14, 15, 17, 18, 19, 20, 24, 25, 26 and 28, 1947, Rail Grinder Machine Operator Joseph Durkin was assigned the duties of grinding rail. Operator Durkin is regularly carried on the time rolls of Extra Gang No. 3.

On the various dates referred to in the Employes' Statement of Claim, Mr. Durkin was assigned to work on Section No. 1, detached from the supervision of the foreman of Extra Gang No. 3. While employed on Section No. 1, Mr. Durkin did not receive any instructions from his foreman and was responsible for the proper performance of the rail grinding work being done on Section No. 1.

While working on Section No. 1, detached from the supervision of his foreman, Operator Durkin claimed the differential rate of ten cents per hour, provided for in the Memorandum of Agreement, effective July 24, 1947.

The Carrier declined to pay the differential rate.

The agreement in effect between the two parties to this dispute, dated May 15, 1942, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: A Memorandum of Agreement identified as Decision MW-1 and dated July 24, 1947, between the Boston and Maine Railroad and the Brotherhood of Maintenance of Way Employes, reads as follows:

OPINION OF BOARD: Claimant is assigned to and holds seniority on Extra Crew 3, Foreman Leduc, Boston Yards, District No. 1. There is no dispute that Claimant holds the rating of Roadway Machine Operator for which a special rate differential of 10c per hour increase has been negotiated to apply when such operators "are detached from the supervision of the Foreman and sent out on line of road alone or with others . . . " (Decision MW-1—Boston and Maine Railroad and B. of M.W.E.)

On the days in question, Claimant was detached from Extra Crew 3 and was assigned to work on Section No. 1, which is beyond Foreman Leduc's jurisdiction, but within the Boston Terminal area where Claimant usually works.

The sole question at issue is whether Claimant is entitled to the 10c an hour rate increase for all hours worked on the days involved in the claim, representing the time employed on Section No. 1. If the Memorandum of Agreement identified as Decision MW-1 applies, he is entitled to prevail. Otherwise he is not.

The Memorandum, according to the record, is a specially negotiated Agreement entered into for the purpose of settling a then pending grievance and to fix a differential in rates of pay for services to be performed in the future. Being an Agreement designed for a particular purpose, it has application to the peculiar facts and circumstances which provoked the Agreement in the first instance, and such other application reasonably contemplated by the contracting parties at the time the Agreement was made.

To determine what was within the contemplation of the parties, it is first to be remembered that they are not strangers to, nor novices at, negotiating working rules of agreement. With this in mind, and since every agreement must have a definite object, we look to the instrument to ascertain its object. Manifestly it was intended that a rule be negotiated which would be all inclusive and would permit the use of the Machine Operator, who is somewhat a nomadic character, at all points along the Carrier's road, immediate and remote, congested and isolated, all without being hampered by the usual restraints of seniority, requirements for supervision, and the like. The Agreement makes of the Operator more or less a free agent, with all duties and responsibilities attendant thereon, when it is necessary to take him away from his regular crew assignment and the usual supervision over that crew.

We next look to the consideration and mutuality of obligation under the Agreement, as a further guide, for ascertaining the expressed intent of the parties. Clearly, when the Roadway Machine Operator is required to leave the crew to which he is regularly assigned, and to go outside the territory over which the foreman of that crew has jurisdiction, the Carrier has agreed to pay him a rate differential of 10c an hour, in lieu of supervision, and as compensation for added responsibility. That which is obligatory, under the Agreement, is that the employe work without supervision and that the 10c differential be paid. An attempt on the part of Claimant to insist on supervision, in lieu of payment, would be no more valid than an attempt on the part of the Carrier to substitute supervision for the increased rate. To hold otherwise would make of the Agreements a mere wish, will, and want arrangement, or no Agreement at all.

Accordingly, we hold that the Agreement controls in this case, and not what was, or was not, done with respect to supervision during the time Claimant was detached from his regular crew and was working outside the jurisdiction of his regular crew's foreman.

We hold the claim meritorious to the extent properly stated. However, we hold that part (1) of the claim, beyond the allegation that the Agreement was violated, implies that the Carrier did not have the right to require Claimant to perform the work in question. This is in error.

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 Employe involved in this dispute are respectively Carrier and Employe 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 to the extent shown in the Opinion.

AWARD

Claim (1) sustained as stated in the Opinion and Findings; claim (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of December, 1950.