

Award No. 6338
Docket No. MW-6238

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
BANGOR AND AROOSTOOK RAILROAD COMPANY**

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

(1) That the Carrier violated the agreement when they assigned employees of an extra gang to perform overtime service on Section 363 on Sunday, October 14, 1951, and failed to utilize the services of Trackman A. L. Dyer who was regularly assigned to Section 363;

(2) That Trackman A. L. Dyer be allowed ten (10) hours pay at his regular time and one-half rate account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On Sunday, October 14, 1951, the Carrier assigned the personnel of an extra gang to perform ten hours of overtime service in connection with the renewal of the track structure through a highway crossing on Section No. 363 at Presque Island, Maine.

In addition to the employees of the extra gang, the Carrier also assigned Section Foreman Ray Crawford and Trackman Phillip Giggey, to overtime service on the same day and on the same project. Foreman Crawford and Trackman Giggey are regular employees on Section No. 363. Trackman Arnold Dyer, who was also a regular employee on Section No. 363, was not called to perform overtime service on Sunday, October 14, 1951.

The work involved consisted of removing the then existent highway crossing, the track structure which intersected with the highway and the ballast which supported the track structure. New ballast was then installed and a new track structure constructed on the new ballast, which was then surfaced and lined to the desired standard. A new highway crossing was then installed over the track structure.

All of the employees used in the performance of the above-mentioned work were compensated for ten hours' work at their respective overtime rates of pay.

The regular assigned rest days for the employees of Section No. 363 and for the extra gang are Saturdays and Sundays, and any work performed on such rest days is compensable at the overtime rate under the provisions of the effective agreement.

We find that the employes holding seniority have a more valid claim to the work in question than do those who have no seniority, and under the facts and circumstances of this case, the claim has merit. See Awards 2716, 2717, 4803."

"Award 4803—Awards of this Board are clear on the principle that in the absence of Agreements, understandings or established practices to the contrary, work on a section belongs to the regularly assigned foreman and his crew. In the light of this principle, the contention of the Carrier to the effect that Moyers was properly assigned to this work because he was senior to Beasley on the Division is untenable. Beasley's right to the work on the section arises from his having bid in the section foremen's position and being the holder of the same. The work of the position therefore, belongs to him and his right thereto while he is the incumbent of the position cannot be defeated by an employe who has greater seniority on the Division."

We respectfully request that the claim be sustained.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and are hereby made a part of the question in dispute.

CARRIER'S STATEMENT OF FACTS: It is the practice on the Bangor and Aroostook Railroad to do all of the ballast operation with an extra gang crew composed of necessary machine operators and laborers. This practice has been in effect for a long period of years and has never been questioned or contested by the employes.

On Saturday, October 13, 1951, this ballast crew was moved into Presque Isle, Maine, to renew the ballast under Chapman Street Crossing; that is, the main line and sidings adjoining were to be taken up, the old ballast was to be removed and new ballast put in; also, the rails were to be welded so as to make continuous rail through this crossing to improve working condition of the automatic gates at the crossing.

On Sunday, October 14, 1951, the ballast crew under Foreman L. V. Levesque reported at their regular starting time. They removed the main line and such adjoining tracks as were necessary, and with the equipment on hand took out the old ballast to approximately a depth of 2 feet, and new crushed rock ballast was hauled in to replace the ballast removed. They then replaced the tracks, and with the equipment resurfaced these tracks.

POSITION OF CARRIER: It is customary and necessary to do work of this nature with our ballast crew. The work of welding the rails was under the supervision of our Mechanic, and the Section Foreman and one trackman were called to assist him in making the welds, and these were all the sectionmen that were required to assist in this part of the work. There was no work available for Mr. Dyer, and he was not called.

All of the matter contained in the Company's submission has previously been discussed with the Organization representing the employes.

OPINION OF BOARD: Contention is made by the Organization that Carrier has violated the current Agreement by its failure to utilize the services of Trackman A. L. Dyer, for overtime work, Sunday, October 14, 1951, his regular assignment on Section 363, and request the said Dyer be paid for ten (10) hours at overtime rate for such alleged violation, and failure to use the services of said Dyer, on extra gang on said date.

The work programmed for the extra gang to perform on the day in question was specialized work. It required the use of machines and equipment not common to the equipment used by regular assigned section crews. It is not denied by the Organization that such specialized equipment was used by Carrier.

The claim as filed contends Carrier has failed to use the claimant on the day in question. The record clearly shows the claimant, based on his seniority, would have been the next man to be called, had it been necessary to use the services of more employes.

There is no showing that claimant's services were necessary, or that other employes were used to his exclusion. The Foreman and one man were used, and nothing has been offered in the record that any additional employes were necessary.

We thoroughly agree with the principles set down in Award 4700, and supporting awards, but we again reiterate, the claimant in the case before us has made no showing that any employe was given a preference over him, or that the work performed was not that of a specialized nature and required the use of special equipment not commonly used by regular assigned section crews.

The Board is of the opinion there has been no violation of the current Agreement or the Memorandum Agreement between the parties to support a sustaining award. Nor are we able to find anywhere in the Agreement any authority whereby claimant had the exclusive right to the work as alleged.

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

That Carrier has in no way violated the existing Agreements.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1953.