

Award No. 6349

Docket No. MW-6354

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

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

(1) That the Carrier violated the effective agreement when they failed to assign Section Foreman C. Trotter, Silvis, Illinois, to supervise the employes in his crew who were used in overtime service on August 4 and 5, 1951:

(2) That Section Foreman C. Trotter be paid at his respective time and one-half rate of pay for a total of sixteen (16) hours because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. C. Trotter is the regular assigned section foreman at Silvis, Illinois, having several section men regularly assigned to work under his supervision. Foreman Trotter and his crew are regularly assigned to work Mondays through Fridays. Their regularly assigned rest days are Saturdays and Sundays.

On August 4 and 5, 1951, the Carrier's Roadmaster, Mr. B. S. Buskovich called the employes who are regularly assigned to work under Foreman Trotter's supervision, to clean cars. The dates involved are a Saturday and Sunday, respectively, and work performed on these days is compensable at time and one-half. The employes used on those dates were compensated at their time and one-half rates of pay.

The Roadmaster did not call or permit Foreman Trotter to supervise the work of his crew on the dates in question, consequently, Foreman Trotter sub-

Inasmuch as there has been no violation of any rule of the Agreement, the Carrier respectfully petitions the Board to deny the claim.

OPINION OF BOARD: This dispute concerns the claim of Section Foreman C. Trotter for compensation at time and one-half for 16 hours due to his not being called to supervise members of his crew on Saturday and Sunday August 4 and 5, 1951. On these dates the crew in question was called and assigned to clean a number of freight cars.

The Organization takes the position that the right, need and requirement that a foreman be with his gang at all times and personally supervise all work performed by them is recognized by the Carrier and cites Rule 229 of the "Rules and Regulations for Maintenance and Structures". The Organization likewise asserted that even though the work in question may not historically be Maintenance of Way work, once it was assigned to the gang it was work to be performed under the terms of the effective agreement.

Rule 229 of the Rules and Regulations for Maintenance and Structures reads as follows:

"229. Absence from Work.—They must remain with their men and personally supervise and engage in all work of the gang, and must never absent themselves from duty without permission from their superior.

"When called from work by sudden sickness or otherwise, Foreman must leave the most reliable man in the gang in charge, and make wire report, where possible, to Roadmaster, but no work must be done which would cause an obstruction to the track or structure, until a properly authorized substitute has been arranged for by their superior."

Respondent asserts that the cleaning of cars is not now and has never been exclusively the work of Maintenance of Way employes but has been done by numerous other crafts; that the cleaning of cars at this location has been done without the supervision of Foreman for many years and that under the circumstances existent on the date in question there was no need for supervision.

The effective agreement here contains no consistent rule which makes it mandatory for a foreman to personally supervise his men. In the absence of such a rule we must look to the type of work to be done and the conditions under which it was to be performed. It is the province of the Carrier to determine the amount of supervision, if any, that is required in the performance of work of the type here involved. There is no showing that the work could or would have been completed more satisfactorily or expeditiously had the claimant here been called.

No other supervisor was called and no direct personal supervision was furnished the crew in question. Rule 229 of the Rules and Regulations for Maintenance and Structures governs the performance of supervisory duties and fixes the responsibility of supervisors in connection with work of a different nature than we have here.

The Organization here has not shown either a violation of a schedule rule or the need for supervision. This Board has held in numerous awards that the burden of establishing facts sufficient to require the allowance of a claim is upon the party seeking relief. This was not here done.

The denial of this claim is based on the particular facts and circumstances of record and it is not intended that the same shall be construed, either by direction or implication that supervision is not needed or required where work is involved that is more nearly Maintenance of Way work belonging to 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 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 29th day of September, 1953.