

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Harold M. Weston, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement on March 18, 1954, when it assigned Track Apprentice Younger to perform 11½ hours overtime work, instead of calling Assistant Section Foreman Otis LeCornu, Jr.

(2) The Assistant Foreman Otis LeCornu, Jr., be allowed 11½ hours overtime pay account of the violation referred to in part one (1) of this claim.

**EMPLOYEES STATEMENT OF FACTS:** The claimant employee holds seniority as a section foreman; as assistant section foreman; and as a section laborer, but, as of the date involved in this dispute, he was working as an assistant foreman because various force reductions had required him to assume services as such in accordance with rule 10 of the effective agreement.

The claimant is senior to Track Apprentice Younger who is also assigned to the Mayfield Section.

On March 18, 1954, the section crew assigned to Section 28 was separated into two units. The claimant was then instructed to and did take six section laborers and proceeding south to Mile Post L-260 to perform track work necessary in connection with culvert renewal work to be performed at that point by Bridge and Building forces.

The section foreman, the track apprentice and the remaining ten members of the Mayfield crew went in the opposite direction (north) and performed track work for the day at points in a northerly direction from their toolhouse.

The claimant and the six section laborers under his supervision arrived at Mile Post L-261 (south of toolhouse) at which point they removed the track structure over the culvert so as to expedite its renewal by Bridge and Building forces.

After the culvert had been renewed and all back filling work completed,

As manager of its property, it is the Carrier's responsibility to get its work done. It is the Carrier's inherent and unilateral responsibility to determine the amount of supervision, if any, that is required in the performance of work. It was determined by the track supervisor that the type of work here involved, consisting of the routine duty of watching the track, could be performed by two laborers. The facts in this case do not support the contention that Mr. Younger was used in the capacity of a supervisor. The writers of the agreement were aware that there was no need for a foreman to, in all instances, accompany his crew, and as a result did not provide a rule in their agreement requiring his accompaniment of the crew. The Board's self-recognized authority is that of interpretation of existing rules of the agreement. The Board has stated in a number of awards its lack of power to write a rule into the agreement. This claim to be sustained must, as a foundation for its sustainment, be grounded upon a requirement of the contract. We know of no such requirement; none such exists. If such a requirement is to become a part of the agreement, it must be put there by negotiations and not by an attempt by the Employees to have such requirements read into existing rules by your Board, and in that manner, force upon the Carrier a practice that is lacking in practicability, economy, or necessity.

Inasmuch as there has been no violation of the agreement, the Carrier respectfully requests the Board to deny the claim.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

**OPINION OF BOARD:** The Petitioner contends that Claimant should have been assigned certain work that was performed by a track apprentice named Younger on March 18, 1954. It is clear that in view of Rules 1, 2 and 4 of the applicable Agreement, Claimant's seniority standing gives him priority over Younger so far as the assignment of supervisory work is concerned.

The only substantial question is whether or not the work in question was of a supervisory nature. As to that question, the burden of proof rests on the Petitioner (see Awards 9537, 9390, 9261) and while it has cited a number of general principles and awards that are of interest in this case, Petitioner must establish the claim by substantial competent evidence before those principles and awards can begin to apply. This the Petitioner has failed to do for the record does not contain adequate proof, as distinguished from mere contentions and conclusions, that a substantial amount of the work involved was of a supervisory nature. Such proof is essential to Petitioner's case and no amount of argument, conclusion and citation can take its place.

More particularly, for example, we are not persuaded that supervisory aspects of the work were spelled out by evidence that two employees, Younger and another, performed it while no foreman was present or that it consisted of raising as well as observing newly repaired track. Without indulging in unwarranted inferences or presumptions, we find no competent proof to support Petitioner's assertion that Younger performed the same work then as Claimant did during his regular hours. Nor is the claim buttressed by the contention made during oral argument that Claimant supervised the relief of the second employee; in reply the Carrier showed no specific evidence that such relief had in fact been directly handled by the foreman and while Petitioner contends that Carrier did not make that point on the property, it was not untimely for Carrier to introduce the evidence when it did, in immediate reply to a contention made during oral argument.

Viewing the record as a whole, we are satisfied that the Petitioner has failed to prove its case. Under the circumstances, the claim will be denied.

**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 Agreement was not violated.

**AWARD:** Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1961.