

Award No. 10611

Docket No. MW-9889

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

David Dolnick, Referee

PARTIES TO DISPUTE:

**RAILROAD DIVISION,
TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO
DONORA SOUTHERN RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim or Grievance of Employees: That it is a violation of the agreement to have Tractor Operators and their helpers do work that belongs to the Trackmen when there are Trackmen available.

That Article 2 (m), Article 27 (d) with ADD: 1 and Letter of August 16, 1955, second paragraph were violated.

That in Claim #39 on December 5, 1955, the Carrier assigned Track Shifter Operator and his Helper to perform the work of Trackmen. That Mr. Ray Adams and R. Perry, Trackmen, were available for this work and should have been assigned to do the work. That in Claim #40 on December 6, 1956, the Carrier assigned a Track Shifter Operator to perform the work of a Trackman. That Mr. William Adams, Trackman was available for this work and should have been assigned to do the work.

Since the Carrier violated the Articles of the Agreement the Organization requests that the Honorable Board sustain the employees position and require the Carrier to compensate the employees as asked for in their original claims.

That in Claim #39 Mr. Ray Adams and Mr. R. Perry be compensated five (5) hours at the overtime rate for December 5, 1956 and in Claim #40 Mr. William Adams be compensated four (4) hours at the overtime rate for December 6, 1956.

EMPLOYEES' STATEMENT OF FACTS: That Mr. Ray Adams, R. Perry and William Adams do hold positions as Trackmen with the Donora Southern Railroad Company.

rate of pay for the day or days he is so engaged; but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed."

POSITION OF CARRIER: In processing these claims on the property, the Organization took the position that the work involved here, which was performed outside of regular hours of service and not continuous overtime, was emergency service, and that, therefore, under the second paragraph of letter dated August 16, 1955 (Page No. 46 of Schedule) two additional trackmen should have been called in Claim No. 39 and one additional trackman should have been called in Claim No. 40. The Carrier is inclined to agree with that position; that is to say the literal language of that paragraph should be strictly followed and " * * * in the event emergency employes were needed for jobs in the Maintenance of Way Department, the men working as trackmen would be called first." Accordingly, the Carrier offered to allow these claims on the basis that in neither case should a track shifter operator or helper have been called, and that additional trackmen should have been called and the senior qualified trackman reporting should have been upgraded under Article 8 (a) to operate the track shifter. Since the Organization declined to take a position in this respect, the claims were denied.

During regularly scheduled hours track shifter operators and helpers are used to perform trackmen's work when not operating the machine. This practice is consistent with Article 8 (a) of the Schedule and has never been protested. The only justification for changing this practice when it occurs outside of regular hours of employment must be found in the letter of August 16, 1955 referred to above. If track shifter helpers and operators are to be called in emergency situations under that letter, there certainly is nothing in the letter that takes away the right to use them as trackmen when they are not operating the machine. If, on the contrary, as the Organization appears to contend, only employes working as trackmen are to be called in emergency situations, it follows that trackmen should be upgraded to perform necessary track shifter operation, and that the track shifter operator and helper should not be called. The Carrier will accept either application, but respectfully submits that until such time as the Organization makes its election in this respect, these claims must be denied.

It is hereby affirmed that all data submitted in support of the Carrier's position have been submitted in substance to the employes or their duly authorized representatives and made a part of the particular case in dispute.

OPINION OF BOARD: The Claimants are Trackmen who on December 5 and 6, 1956 were regularly scheduled to work between 7:00 A. M. and 3:00 P. M. Between 4:30 P. M. and 9:30 P. M. on December 5, 1956, and between 6:00 P. M. and 10:00 P. M., on December 6, 1956 an emergency arose which required the Carrier to use the Trackmen to perform emergency service on No. 14 trestle and track 323. In addition to calling Trackmen, Carrier also called a Track Shifter Operator and

Helper on December 5, 1956, and only a Track Shifter Operator on December 6, 1956. The Track Shifter Operator and Helper when working, delivered the men and materials to the job. When they were not so employed, they performed work of Trackmen. The Organization contends that the Carrier wrongfully used the service of Track Shifter Operators and Helper instead of Trackmen and by doing so violated the Agreement which, in part, provides the following:

"ARTICLE 2

"(m) Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it will be performed by the regular employee."

"ARTICLE 27

"(d) Employees may bid on vacancies or new positions on the basis of their roster standing and the oldest employee bidding in such vacancy or new positions will be awarded the job, provided he has fitness and ability to perform the work. The fitness and ability of said employees shall be mutually agreed to between the Management and the Union Committee.

"ADD: 1. In the Maintenance of Way Department, the Regular Track Shifter Operators and Relief Track Shifter Operators will be consolidated on one roster list and the Regular Track Shifter Helpers and Relief Track Shifter Helpers will be consolidated on one roster list. These men will bid and hold positions which they are able to get, based on individual seniority standings.

"The following is added:

"When the Company truck is used for the purpose of hauling men or materials for Maintenance of Way Department, the senior track shifter operator who is on duty in the immediate vicinity and qualified, shall be used to drive the truck without additional compensation.

"When the Company truck is used for the purpose of hauling men or materials for the Maintenance of Equipment Department, the senior man in the department who is on duty in the immediate vicinity and qualified, shall be used to drive the truck without additional compensation.

"Nothing in the foregoing shall be construed to prohibit any supervisors from operating the truck, except when hauling men or materials."

Also the following letter which, in part, says:

"Letter of August 16, 1955

Page 46 — Paragraph 2 — "Claims of the Maintenance of Way Department Nos. 1, 4 and 5 were discussed and you withdrew

Claim 4 and 5. Claim No. 1 is allowed at the claimants' respective rates, with the understanding that furloughs would be affected in the Maintenance of Way Department from the Trackmen's roster by reverse seniority order. It was also agreed in connection with the allowance of Claim No. 1 that in the event emergency employees were needed for jobs in the Maintenance of Way Department, the men working as trackmen would be called first. The employees on other rosters would be called next in the event additional men were needed; and, further, after the men working as trackmen were called and employees working on other rosters other than trackmen were called and additional employees were needed, those employees working on the special positions would be called."

On March 6, 1957 in reply to a communication from the Organization concerning claims here involved, the Carrier wrote to Mr. Joseph Shavinski, International Representative of the Organization in part as follows:

"It was your position in this claim that under the second paragraph of letter dated August 16, 1955, appearing on Page No. 46 of the Schedule, the track shifter operator and helper (who normally also perform trackman's work in a regular tour of duty) could not be used to perform trackman's work in emergency situations until the Trackmen's Roster was exhausted. We are inclined to agree with you that a precise literal interpretation of the second sentence of that paragraph accomplished such result. However, such literal interpretation, we believe, goes further than was intended by the parties. The letter says that '* * * in the event emergency employees were needed for jobs in the Maintenance of Way Department, the men working as trackmen would be called first.' Applying this language literally, as you desire, would result in calling only men working as trackmen to perform any emergency work whether it belonged to trackmen as such, e.g., work of track shift operators, dumpmen, etc. It would also follow that while only trackmen would be called, the senior qualified trackman in the gang called would then for example be assigned to the track shifter operator's position, but as a trackman could continue to do trackmen's work when not needed as an operator. If the foregoing is in accordance with your interpretation, this claim is allowed. Otherwise, claim is denied. If on the other hand, you desire a further discussion of this matter, we are agreeable to consider it still open and time limits waived for that purpose. Please advise."

On March 25, 1957, the Organization wrote to the Carrier that the proposal was unacceptable.

During regular assignments, Track Shift Operators and Helpers perform Trackmen's work whenever work in their own classification is completed. There is no disagreement between the parties on that subject. When conditions require, Trackmen are assigned to do Track Shifter work and the Track Shifter Operators are assigned to do Trackmen's work. Under those circumstances Carrier complies with the provisions of Article 8 of the Agreement which reads as follows:

“Filling Vacancies

“(a) When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate of pay for the day or days he is so engaged; but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed.”

Article 8 is part of the Agreement between the parties whether the work is performed during regular assigned hours or during emergencies. If, during emergencies, an employe is assigned to a higher rated job, or if an employe is assigned to a lower rated job, the provisions of Article 8 applies.

The Organization admits that the Carrier properly called a Track Shifter Operator and Helper on one day and a Track Shifter Operator alone on the other day because that was the job which was properly performed by the employe in that classification. Both in the record and in the brief filed by the Organization it agrees that “Track Shifter Operators have the right to be called for such work that was then their classification.” Having so properly called them, the Carrier had every right to utilize their services for hours of work required at whatever work was available as long as it complied with Article 8.

This is not a case where the Carrier deliberately crossed craft or class lines for the purpose of depriving “classified employes of their seniority right to be called for work in their craft or class.” The awards cited by the Organization are easily distinguished. In Award 4653 (Carmody) work was removed from one seniority district to another to improve service. In Award 6021 (Parker) the Carrier combined jobs in different seniority rosters. In Award 2775 (Parker) we held that the Carrier could not assign an employe outside his regular assignment and deprive him of premium pay. Awards 6698 (Donaldson), 3416 (Blake) and 6732 (Parker) are, likewise, not relevant to the issue in dispute.

While it is true that the letter of August 16, 1955 states that “in the event or emergency Trackmen would be called first” we must, nevertheless, read this language in conjunction with the entire Agreement between the parties and apply the practice which has existed in the assignment of work to employes under that Agreement. We can not ignore Article 8 nor can we ignore the fact that Track Shift Operators and Helpers perform Trackmen’s work during the regular assigned hours on this property. Further, we can not ignore the fact that it is a common practice for Tractor Shifter Operators and Helpers to perform Trackmen’s work on this property. Article 8 and the practice of work assignments applies to emergency work in the same manner that it applies to regular assigned hours of work.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1962.