

**Award No. 11332**

**Docket No. MW-10520**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**William H. Coburn, Referee**

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**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 effective Agreement when it assigned or otherwise permitted nine (9) employees of the Nordberg Manufacturing Company to perform the work of surfacing track, including the operation of work equipment in connection therewith.

(2) Each of the employees hereinafter named be allowed pay at pro-rata rates as hereinafter shown for an equal proportionate share of the total man hours consumed by the Nordberg Manufacturing Company employees in performing the work referred to in Part (1) of this claim.

<b>Name of Claimant</b>	<b>Rate to Apply</b>
R. T. Farrow	Track Foreman Section No. 3
M. Wright )	
J. W. Davis )	
L. C. Crawford )	
W. E. Davis )	
K. L. Hickerson )	Trackmen on Section No. 3
O. Perry )	
G. W. Wilson )	
W. H. VanDyke )	
C. Jenkins	Multiple Tamper Operator
J. C. King	Power Jack Operator

**EMPLOYES' STATEMENT OF FACTS:** The Carrier contracted with or made arrangements with the Nordberg Manufacturing Company to raise, level and tamp its track on the Mississippi Division between Arlington and Bardwell, Kentucky.

The Carrier re-emphasizes that the Nordberg Company did nothing more than to demonstrate its newly developed and improved machinery, which was very expensive, unavailable and unfamiliar to the Carrier or its employes. The demonstration was free of charge, and its sole purpose was to demonstrate the equipment. It was not intended, nor did it, deprive Maintenance of Way employes of work and, for this reason alone, there is no basis for this claim. This principle is upheld in Second Division Award 2377, where the Board states in part:

“ . . . It is only when the carrier pursues an unusual course for the evident purpose of depriving employes of the work which they ordinarily and traditionally perform that a basis for claim exists . . . ”

Furthermore, the Carrier submits that no Maintenance of Way employe lost any compensation or time as a result of this demonstration. Instead, Section Gang No. 3, the Gang herein involved, worked on their assigned section throughout the demonstration, performing their customary duties connected with track surfacing. Thus, the Claimants were not adversely affected, and there, in any case, could be no proper objection to having demonstrations performed under the circumstances described herein.

This claim is wholly without merit and it should be denied.

All relevant facts and arguments involved in the dispute have heretofore been made known to the employes.

**OPINION OF BOARD:** This Carrier and the Nordberg Manufacturing Company arranged for the demonstration of a newly-designed Track Surface-Power Jack unit and an improved Automatic Gang Tamper. The actual demonstration of the equipment began on December 11, 1956, and continued through the next seven working days. It was confined to a distance of 2.06 miles of Carrier's track. Except for one machine operator employed by the Carrier and assigned to observe the demonstration, all others involved were employes of Nordberg.

The Petitioner contends that the work involved in the demonstration, i.e., track surfacing by means of raising, leveling and tamping, belongs to the employes it represents under the Scope Rule of the effective Agreement and, thus, the Agreement was violated when others were used to perform that work.

It appears to the Board, however, that the work claimed as a matter of right under the Agreement was only incidental to the sole purpose here sought to be accomplished—to demonstrate the usefulness and effectiveness of new equipment under actual operating conditions. No work was contracted out; no leasing arrangements were made; no charges by Nordberg for the service performed were levied. There is no evidence in this record that the demonstration was arranged by the Carrier and Nordberg to avoid having the work of surfacing track performed by covered employes. (See Second Division Award 2377).

Under the factual situation present here, the claim is not supported by the Agreement and, therefore, must fail.

**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 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 26th day of April 1963.