Award No. 11441
Docket No. MW-10303

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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) Carrier violated the agreement when, beginning on August 4, 1956, it discontinued the long and well established practice of calling and using the section foreman at East St. Louis Terminal to in turn call and supervise members of this crew to perform work of servicing banana cars at that point.

(2) The decision by Division Engineer Van Arsdalen dated October 5, 1956, the decision of Supervisor Bodell of November 5, 1956, the decision of Engineer Maintenance of Way Jacobs dated January 7, 1957, were not in conformance with the requirements of Sections 1 (a) and (c) of Article V of the August 21, 1954 Agreement.

(3) Because of the violations referred to in Parts (1) and (2) of this Statement of Claim, the claim as presented by Local Chairman Wheeler to Division Engineer Van Arsdalen in a letter dated September 26, 1956, be allowed as presented.

EMPLOYES' STATEMENT OF FACTS: For more than twenty years, section forces at East St. Louis have serviced banana cars passing through that terminal. When such service was required during overtime hours, the section foreman would be notified accordingly and he in turn would call and supervise members of his section crew in the performance of that work of servicing banana cars.

That arrangement continued until August 4, 1956, when instructions were issued such as were quoted in the letter of claim presentation by Local Chairman Wheeler to Division Engineer Van Arsdalen, this letter being dated September 26, 1956, and reading as follows:

ing. It is the prerogative of management to determine the amount and kind of supervision exercised. The foreman who is the claimant in this case performed no function in servicing banana cars, his presence would have served no purpose whatever, and it was decided in the interests of efficiency that his presence was not warranted. In fact, during regular assigned working hours when track laborers are used to service banana cars, it frequently occurred that the section foreman, Mr. Floyd Holshouser, claimant in this case, would leave one, two, or three men, as required, to assist the banana men and go about his track work with the balance of his force to work on track at another location or in an adjoining yard.

The agreement does not require the assignment of a foreman under any particular circumstances as long as the duties of a foreman are not performed by any other employe. It is not necessary to assign a foreman to supervise one or more laborers on this type of overtime work. Third Division Award 7059 on this property disposed of a similar case with the following opinion:

> "It is plain from the record that the B.&B. Supervisor designates the work to be done by the painter, but he does not instruct the painter or direct him in the details of the work. Under these circumstances, the B.&B. Supervisor is not doing the work of a painter foreman. We point out also that the agreement does not require the assignment of a foreman. The need of supervision, in the absence of agreement provisions to the contrary is a matter within the prerogatives of management. Awards 4235, 4992, 6114, 6699. It appearing that Carrier does not deem the assignment of a foreman necessary and there being no employe wrongfully performing the duties of a foreman, there is no basis for an affirmative award."

Also see Fourth Division Award 801.

It is the position of the Carrier:

(1) There is an agreement between the parties to this dispute, (supra) governing the rules, rates of pay, and working conditions of the claimant.

(2) Under the agreement, claimant has no contractual right whatever for a claim; consequently, claim as filed by the Organization is not valid.

(3) Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is required to give effect to the said agreement and to decide the present dispute in accordance therewith.

(4) The Carrier has conclusively shown that there is absolutely no basis for the claim of the Employes in this dispute, and therefore requests its denial or dismissal without qualification.

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

OPINION OF BOARD: The material facts are not in dispute. On August 4, 1956 Carrier's Trainmaster at East St. Louis, Illinois, notified the Yardmaster, Chief Yard Clerks, and Agents, in part, as follows:

"Effective at once, at night and on Saturdays, Sundays and Holidays, handling of section men to help and assist the banana messengers and service the banana cars, will be handled as follows:

Arrange to have the clerk who usually calls the section foreman discontinue calling the section foreman and instead, call one of the laborers when six cars or less are to be inspected. In the event there are more than six cars, two men should be called."

For many years prior to August 4, 1956, the clerk called the foreman, who in turn called the laborers. The foreman also kept work time records.

Petitioner claims that the Carrier violated the Scope and Seniority provisions of the Agreement and that, in any event, the claim should be sustained because Carrier failed to give the reason why the claim was disallowed as required under Article V of the August 21, 1954 Agreement. Since the latter issue is a procedural and jurisdictional question, we shall give it first consideration.

Section 1 (a) of Article V of the August 21, 1954 Agreement reads, in part, as follows:

"Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented. . . ."

The claim was presented by the Petitioner in a letter dated September 26, 1956. That letter stated that Carrier, by the instructions dated August 4, 1956, abrogated "the traditional and historical right of the foreman to supervise his men, and to engage in the work when the gang is small." It also stated that the Carrier arbitrarily removed "this work, heretofore performed by section foremen, from the confines of one seniority group and transfers it to another seniority group completely separate and different." Carrier's Division Engineer replied that: "There was no violation of the schedule agreement, and this claim, is therefore, respectfully declined." Carrier's Terminal Superintendent, on appeal, denied the claim for the same reason. In subsequent appeal correspondence Carrier's agents discussed the claim in some detail, but in every instance denied it primarily because Carrier did not violate any of the terms and conditions of the existing Agreement.

In each of the pertinent Awards cited on behalf of the Petitioner, the claim was sustained because Carrier disallowed the claim in one of the following ways:

"request in this case is declined"

"Claim denied"

"these claims are hereby denied"

"I declined this claim"

"Payment of time as claim is hereby declined."

This is not the situation in the dispute before us. The claim was presented on the basis that the Carrier violated the Agreement. Carrier replied that the Agreement was not violated. This is a clear reason for disallowance and in compliance with Article V of the August 21, 1954 Agreement. The issue must be decided on the merits.

Petitioner argues that the Carrier violated the Agreement because a Clerk, not covered by the Agreement and holding no seniority rights thereunder, was directed to call a laborer or laborers who would assemble the crew required to service banana cars. It is also argued that because banana cars had been serviced in East St. Louis by track forces for more than twenty years that the work is covered within the Scope Rule of the Agreement.

The actual work of servicing banana cars at East St. Louis continued to be done by laborers under the Agreement. The only change made by the directive of August 4, 1956 was to eliminate the foreman. The clerk, who called the laborer or laborers when required, did not supervise them. He called them direct instead of calling the foreman who, in turn, previously called the laborers.

We have consistently held that, unless otherwise specifically provided in the Agreement, Carrier has the sole and exclusive right to determine when and under what circumstances a foreman is assigned to supervise a group of employes. Awards 11075 (Dorsey), 7059 (Carter), 6699 (Donaldson), and 6398 (McMahon).

There is no provision in the Agreement which requires the Carrier to assign a foreman to a labor gang servicing banana cars. The mere fact that a foreman was previously used to call and supervise the labor gang does not establish for all time an obligation that the Carrier continue to use a foreman.

The keeping of work time records is essentially clerical. It may be incidental to a foreman's principal duty. Such limited clerical work is not the exclusive responsibility of the foreman.

Banana cars are serviced at East St. Louis only upon instructions from the representatives of the Fruit Company. Such instructions are given to the yard clerical force who call the section laborers. Whether a section foreman is called to supervise the laborers is a matter which lies solely within the discretion of the Carrier.

On the basis of all the facts, we find that there is no merit to the claim.

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 Employe 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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.