Award No. 11715

Docket No. MW-11262

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, 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 effective Agreement when it assigned Section Laborer W. Corthan to perform On Track Mowing Machine Head Operator's work on July 24, 25 and 26, 1957 and failed and refused to compensate him at the On Track Mowing Machine Head Operator's rate of pay while so assigned.

(2) The Carrier now be required to reimburse Mr. W. Corthan for the difference between what he received at the Section Laborer's rate and what he should have received at the On Track Mowing Machine Head Operator's rate of pay because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On July 24, 25 and 26, 1957 the Claimant, Mr. W. Corthan, who was regularly assigned to the position of Section Laborer, was assigned to and did perform On-Track Mowing Machine Head Operator's work in the operation of an on-track mowing machine between Darling and Lambert, Mississippi.

While so assigned, the Claimant was paid at the Section Laborer's rate instead of the On-Track Mowing Machine Head Operator's rate.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, together with supplements, amendments and interpretations thereto is by reference made a part of this statement of facts.

POSITION OF EMPLOYES: Rule 28 reads as follows:

"Rates of pay shown on rate sheets are the agreed rates of pay of employes covered by this agreement."

In connection therewith, we invite attention to the following:

In the instant case, the same parties, rules, circumstances, and facts are involved. Here, too, there has been a long standing practice to use track laborers exactly as was done here, without prior complaint, and here too the work performed by Claimant Corthan falls far short of that of an On-Track-Mowing Machine Head Operator.

The claim is without merit and it should be denied.

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

OPINION OF BOARD: It is the contention of the Claimant, Section Laborer W. Corthan, that he was assigned to perform, on a Track Mowing Machine, Head Operator's work on July 24, 25 and 26, 1957, between Darling and Lambert, Mississippi, and asks that the Carrier be required to reimburse him for the difference between what he received at the Section Laborer's rate and what he should have received at the On Track Mowing Machine Head Operator's rate. (In a letter of Agreement dated August 9, 1955, in compliance with Rule 28 of the Agreement, rate of pay sheets set up a scale of pay for On Track Mowing Machine Head Operators only.)

Carrier declined the claim in the instant case by claiming the responsibility for and the operation of the Mowing Machine was that of the Section Foreman, under whose jurisdiction the Claimant was employed. Carrier contends there are two methods of assigning and operating On Track Mowing Machines —one method is to assign a Head Operator to operate the equipment over several sections or Supervisors' districts, paying him at the Head Operator's rate; the other method has been to assign the equipment to a Section Foreman when it is needed on his Section, the Foreman having sole responsibility for the operation and maintenance of the equipment, that when the equipment is operated by a Section Foreman assisted by Track Laborers, it has been the practice to compensate the Section Foreman at his regular rate and the Track Laborers at their regular rate.

Petitioner admits the machine was being used under the overall supervision of the Section Foreman, but contends the rate of pay of a Head Operator has always been applied on this property to the employe who operates the motor car which is used to pull the Mowing Machine as Claimant did in this case.

Thus, we find two conflicting claims by the parties to this dispute as to what the practice is, or was, on this property. Neither side has offered any evidence supporting their respective contentions other than mere assertions of the claim of the practice on the property.

If the practice was as Petitioner urges, then Claimant should be paid the difference between what he was paid as a Track Laborer and the Track Mowing Machine Head Operator's rate; to the contrary, if the practice is as has been contended for by the Carrier then the Claim should be denied.

It should be a relatively simple matter for the parties to determine this themselves. For the foregoing reasons this matter should be remanded to the property for further consideration and disposition.

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 claim should be remanded to the property for disposition as indicated in the Opinion.

AWARD

Case remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of September 1963.