

Award No. 12971

Docket No. MW-12663

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Supplemental)

Don Hamilton, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
THE DELAWARE AND HUDSON RAILROAD CORPORATION**

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

(1) The Carrier violated the effective Agreement when it assigned Assistant Foreman Harold Harrington to perform the usual and customary duties of an extra gang foreman from August 14, 1959 to and including November 16, 1959 and failed and refused to compensate him therefor at the Extra Gang Foreman's rate of pay.

(2) Harold Harrington now be allowed the difference between what he was paid at the Assistant Foreman's rate and what he should have been paid at the Extra Gang Foreman's rate for the period beginning October 5, 1959 to and including November 16, 1959.

**EMPLOYEES' STATEMENT OF FACTS:** On this property, the work of raising (surfacing) track for spot tamping work has always been recognized as extra gang foreman's work.

On December 2, 1959, the undersigned General Chairman learned that Assistant Foreman Harold Harrington had been assigned to and did raise track for spot tamping work during the period beginning with August 14, 1959 and continuing through November 16, 1959 and that he had been compensated therefor at Assistant Foreman's rate instead of at the Extra Gang Foreman's rate. The subject claim was immediately presented to Track Supervisor George A. Rice, the monetary claim necessarily being retroactively confined to sixty days prior to date of claim presentation.

Track Supervisor Rice declined the claim in a letter dated January 11, 1960, although conceding therein that "Assistant Foreman Harold Harrington was surfacing track during the period of October 5th to November 16, 1959 inclusive."

Subsequent appeals were all denied.

of the railroad under the Supervision of a Track Supervisor or other carrier official does not forever estop the carrier from assigning such a machine to a regular section gang, to be used by the gang as directed by the Section Foreman.

It is the position of the carrier that this claim is without support of any rule or practice on this property, and should be denied in its entirety.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This claim involves a dispute as to the appropriate wage scale to be paid for raising track for spot tamping work.

The organization alleges that Assistant Foreman Harold Harrington was assigned to and did raise track for spot tamping work, during the period August 14, 1959 - November 16, 1959, and was paid therefor at the rate of an Assistant Foreman. The employees state that Harrington should have been paid at the Extra Gang Foreman's rate. The Brotherhood charges that raising track for spot tamping work has always been recognized as Extra Gang Foreman's work on this property.

The organization asks that Harrington be allowed the difference between what he was paid at the Assistant Foreman's rate, and the rate of an Extra Gang Foreman, for the period between October 5, 1959 and November 16, 1959.

Carrier attempts in this case to draw a distinction because certain work is performed on a division basis, while other work is that of a gang. That is, whether he worked under a foreman, or independently as an Extra Gang Foreman.

We fail to understand the significance of such a distinction as applied to the facts in this case.

The record is sufficient to establish that this work is customarily considered that of an Extra Gang Foreman. We do not find evidence advanced by the Carrier to substantiate the exception which they claim by attempting to draw the distinction mentioned supra.

**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 violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1964.