

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, on October 24, 1960, it assigned or otherwise permitted Assistant Track Supervisor Arnold Thompson to drive a truck and to haul track material and equipment from Ravenna, Kentucky to Hazard, Kentucky.

(2) Mr. E. E. Howard be allowed eight (8) hours of pay at the truck driver's straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On October 24, 1960, Claimant Howard was available for and willing to perform any service of any of the respective classes within which he holds seniority. The claimant, together with fifty other track department employes, were laid off in a force reduction which took place at the close of work **ON THE WORK DAY IMMEDIATELY PRECEDING THE DATE HERE INVOLVED**, in other words, on Friday, October 21, 1960. The claimant holds seniority as a track foreman, but also holds seniority as a truck driver as of December 15, 1941.

The claimant resides at Ravenna, Kentucky, the point of origin of the work involved in this dispute.

Assistant Track Supervisor Thompson holds a position fully excepted from the scope of this agreement and, on the morning of October 24, 1960, he left his headquarters at Hazard, Kentucky, drove to Ravenna, Kentucky in a Carrier-owned station wagon, accompanied by his son, who is not an employe of the respondent Carrier. The Assistant Track Supervisor's son then drove the Carrier-owned station wagon back to Hazard, Kentucky, while the Assistant Track Supervisor drove a Carrier-owned truck, which had been loaded with tie plates, tie pads and a spike-pulling machine, from Ravenna to Hazard.

The instant claim was properly and timely presented and handled on appeal on the property, the Carrier declining the claim, contending that the

In this instance Mr. Thompson was simply used as a messenger in lieu of perhaps loading the truck on a flat car and shipping it to Hazard. No maintenance or repair work covered by the maintenance of way agreement was performed. Therefore, position of employes is without agreement and should be denied.

OPINION OF BOARD: This claim arose when Assistant Track Supervisor Arnold Thompson drove a truck, partially loaded with track material and equipment from Ravenna, Kentucky, to Hazard, Kentucky, on October 24, 1960. The Brotherhood claims compensation for E. E. Howard at the truck driver's straight time rate for eight (8) hours. The Brotherhood bases its claim upon the Scope Rule, which reads as follows:

"Subject to the exceptions in Rule 2, the rules contained herein shall govern the hours of service, working conditions, and rates of pay for all employes in any and all subdepartments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employes, and such employes shall perform all work in the maintenance of way and structures department." (Emphasis ours.)

with particular emphasis upon the portion printed in bold-face type. It is their contention that the work of hauling track material and equipment is "work in the Maintenance of Way and Structures Department" and encompassed within the Scope of the Agreement.

Carrier admits that the work of hauling track material and equipment necessary to the work of a specific work gang or in connection with a specific job belongs to employes covered by the Agreement. However, Carrier contends that the work of transporting a truck from one point to another, not in connection with any specific work or any specific work gang does not belong exclusively to the Maintenance of Way Employes. They assert that the past practice throughout the system has allowed employes not covered by this Agreement to do such work. Carrier further contends that the fact that the truck was partially loaded with material and equipment at the time is not significant, since this material was also not earmarked for any specific job or work gang.

We believe that the holding and reasoning in Award 12795 is pertinent, and, perhaps, compelling, to a denial of this claim. In that case a supervisor operated a truck which hauled material to B&B gangs or employes and delivered and returned an empty truck from one gang to another. The Brotherhood claimed the work belonged to a truck driver. This Board held in that case:

"Our study of the Scope Rule of the Agreement leaves doubt as to whether the work in question belongs exclusively to B&B truck drivers. The Rule refers to drivers of company trucks 'used by B&B forces or when assigned to service with the B&B Department.' From the facts and proof presented, we cannot conclude that the pick-up trucks driven by the supervisors to and from gangs in the B&B Department were clearly assigned for use of the B&B gang. The hauling of material in a pick-up truck to the gang for later use of B&B Department employes or the moving of a truck to these employes cannot be interpreted from the language of the Agreement to confer an exclusive grant of this work upon the truck drivers.

The truck or material comes within the jurisdiction of the B&B gang only after it is delivered for the use of the gang, and not while it is in transit. History and past practice, in fact, indicate that supervisors transferred trucks from one B&B gang to another as well as hauled small amounts of material and supplies when going out to supervise jobs in order to expedite the work."

We believe that the same observations could be made in the case at hand. For these reasons, the claim must be denied.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1964.