

**Award No. 13134**

**Docket No. MW-12201**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Don Hamilton, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, in lieu of calling and using Track Foreman C. B. Alexander to supervise the work of two track laborers in repairing a grade crossing at Mile Post 165 on Saturday, January 24, 1959, it called and used Track Supervisor Houlditch to perform said Track Foreman's work.

(2) The Carrier violated the effective Agreement when, in lieu of calling and using Track Foreman C. B. Alexander and Track Laborers Willie Harrison and Henry Gilmore to perform the work of repairing a broken rail at Mile Post 105 during overtime hours on February 24 and 25, 1959, it called and used Assistant Track Supervisor Matthews and two junior Track Laborers to perform said work.

(3) The Carrier violated the effective Agreement when, in lieu of calling and using Track Foreman C. B. Alexander and Track Laborers Willie Harrison and Jules Gains to perform the work of smoothing a switch at Mile Post 141 on Saturday, February 28, 1959, it called and used Assistant Track Supervisor Matthews and two junior track laborers to perform said work.

(4) Track Foreman C. B. Alexander now be allowed pay for nine (9) hours at his time and one-half rate because of the violation referred to in Part (1) of this claim.

(5) Track Foreman C. B. Alexander and Track Laborers Willie Harrison and Henry Gilmore each be allowed pay for nine (9) hours at his respective time and one-half rate because of the violation referred to in Part (2) of this claim.

(6) Track Foreman C. B. Alexander and Track Laborers Willie Harrison and Jules Gains each be allowed pay for four (4) hours at his respective time and one-half rate because of the violation referred to in Part (3) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** The Claimant Track Laborers were regularly employed as such on the track gang under the supervision

**CONCLUSION:** Carrier has shown that:

(a) The effective Maintenance of Way Agreements were not violated as alleged, and the claims and demands are not supported by them.

(b) The Carrier has not negotiated away its right to determine its supervisory requirements.

(c) The involved emergency work was performed in accordance with the established and recognized practice throughout the years, which practice was preserved by Rule 61 of the Foremen's Agreement and Rule 53 of the Laborers' Agreement.

The claims and demands which the Brotherhood here attempt to assert being without basis and unsupported by the agreements in evidence, the Board has no alternative but to make a denial award.

(Exhibits not reproduced).

**OPINION OF BOARD:** We have carefully reviewed the detailed record and the excellent submissions presented in this case. It is our opinion that the Organization failed to support its burden of proof in attempting to show that the supervision of the laborers belonged exclusively to the Foremen, or that the Supervisors performed work synonymous with that ordinarily performed by foremen.

Award 8849 has been called to our attention. Without examining the relative merits of that decision, it is sufficient to say that in all areas, it excluded any question of emergency situations. Although we do not need to look that far in this case, it is obvious that such a distinction would be in order here, if we had not decided this matter on the basis enumerated 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 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 11th day of December 1964.