# Award No. 13207
# Docket No. MW-13167

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION
## (Supplemental)

**John J. McGovern, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

## CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it required Section Foreman A. W. Smith to assume and fulfill all the duties and responsibilities of Section Foreman on Section No. 1 in addition to all his regularly assigned duties and responsibilities as Foreman on Section No. 2 from August 15 to and including October 7, 1960.

(2) Section Foreman A. W. Smith be allowed eight (8) hours' pay at the straight time rate of the Section Foreman's position on Section No. 1 for each work day during the period August 15 to and including October 7, 1960, this to be in addition to the compensation already received as Section Foreman on Section No. 2.

EMPLOYES' STATEMENT OF FACTS: As is generally customary on most railroads, the Carrier's property is divided into sections which are numbered. One gang is assigned to each of such numbered sections, each gang consisting of a foreman, occasionally an assistant foreman and a varying number of trackmen, who are assigned to and held responsible for the general maintenance of their respective individual sections.

Positions of Foreman, Assistant Foreman and Section Laborers on each section are obtained by bidding for and being awarded individual positions as such which have been bulletined in accordance with Rule 8. After being awarded and assigned to any of said positions on any particular section, the incumbent thereof can not transfer to a similar position on some other section until and unless he is displaced by a senior employe or until and unless he bids for and is awarded a position on some other section which had been advertised by bulletin.

In accordance with the foregoing, Mr. A. W. Smith was the regular assignee to and incumbent of the position of Section Foreman on Section No. 2 at Forest Glen, Illinois.

Your Board will note from General Chairman James' letter to the undersigned dated January 6, 1961 which letter is quoted earlier in this submission that the General Chairman said that Claimant Smith was "in a sense" vested with the responsibility of operating two sections which in itself indicates an air of uncertainty on the General Chairman's part with respect to Claimant's alleged "responsibilities". The Carrier submits that Claimant was definitely not burdened with "duties and responsibilies" that would require the payment of an additional day's pay.

This Carrier has always had the unilateral right to extend section territories and such right has not been contracted away. Your Board has consistently held in a number of well reasoned awards that all rights which the Carrier has not contracted away remain with it. That principle is applicable here.

It is the Carrier's position that there is absolutely no basis for the instant claim and we respectfully request that the claim be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The Claimant was required by the Carrier to assume the duties and responsibilities of the position of Section Foreman, Section Number 1 in addition to his normal responsibilities of his position as Section Foreman, Section Number 2. The regular incumbent of the Number 1 position had accepted a temporary assignment as a General Foreman, thereby creating the vacancy. The Claimant seeks eight (8) hours' pay at the straight time rate of pay of the foreman's position of Section No. 1 between the dates of August 15 to October 7, 1960 inclusive. This is over and above his regular eight (8) hour pay at the straight time rate of pay of his regular position. There is no allegation of overtime, this simply being a case wherein the Claimant worked his usual (8) eight hour shift but covered 2 positions simultaneously.

During the handling of this dispute on the property, the Petitioner failed to specify wherein precisely his contractual rights had been violated. There is evidence in the record which indicates that a dispute, similar in nature to the one now under consideration, was settled on the property by both parties. It may well be that Petitioner, conscious of this compromise reached by negotiation, felt that it established sufficient precedent to enable him to pursue his claim in the manner in which he did. However, an examination of the correspondence involving that dispute, reveals that the settlement was made without establishing a precedent. We are unable to determine from a review of that correspondence whether the issue considered was identical to the one confronting us, or whether there might have been other circumstances distinguishing that case from the instant one. Conceding for a moment, in the realm of speculation that the issues were the same, we do not feel that we would be bound by the decision rendered. Many cases are settled on a "without prejudice" basis, and although they should be considered, are not binding as precedent. However, since we are not privy to all the facts in that case conjecture and speculation about them will serve us little. We must return to the main point which is that in order for us to sustain this claim there must have been a demonstrable breach of the Agreement, specifically pleaded. Petitioner for the first time mentions in his original ex parte submission that the bulletin Rule of the Agreement was violated. There are too many awards to cite which state categorically that this Board has no jurisdiction over matters not discussed on the property, but even disregarding this procedural objection,

we do not think that the bulletin rule is in any way applicable to the instant dispute.

In conclusion, Petitioner has failed to show that his contractual rights have been violated or that he has been damaged in any way. The combining of the two jobs during the period of time involved, was a proper exercise of managerial prerogative, which was not in any way violative of the Agreement. We will deny 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1965.