

Award No. 13328
Docket No. MW-13303

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
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 Saturday, February 4, 1961, it permitted Track Supervisor C. F. Finch to call, transport and supervise section laborers from Foreman E. S. Vester's section to assist in the replacement of a broken rail on the adjoining section.

(2) Section Foreman E. S. Vester be allowed five hours' pay at his time and one-half rate because of the violation referred to above.

EMPLOYEES' STATEMENT OF FACTS: The factual situation involved in this claim was fully described in the letter of claim presentation which reads:

"February 8, 1961
1-25

Mr. R. E. Nottingham
Division Engineer
L&N Railroad Company
Union Station
Nashville, Tennessee

Dear Sir:

On February 4, 1961, Supervisor C. L. Finch called the section laborers assigned to the gang under Foreman E. S. Vester and carried them to the adjoining section, south of Mr. Vester's section, to change out a rail. Prior to the time that Supervisor Finch left to go to the point where the broken rail was located, Foreman Vester talked to him and told him that he was ready to go along with his men to perform this service. Mr. Finch advised Mr. Vester at the time that he, Mr. Finch, would take the men and assist in changing out the rail, and would return the men to their headquarters.

He did this, leaving Mr. Vester's headquarters about 2:20 P. M. and returning to the headquarters at 7:20 P. M. I am, therefore,

When work is within the scope of a collective agreement and not within any exception contained therein or any exception recognized as inherently existent, that work belongs to the employees under the agreement, and may not be taken therefrom with impunity."

We respectfully request that the claim be allowed.

CARRIER'S STATEMENT OF FACTS: On February 4, 1961, the chief dispatcher wired Track Supervisor C. L. Finch, Milan, Tennessee, advising of a broken rail at Mile 309. This location is on the section of maintenance of way Foreman Frady. Mr. Finch contacted Foreman Frady, who advised he felt he could locate enough employees to change out the rail. Shortly thereafter, however, Mr. Frady advised he could obtain the services of only one employee. Supervisor Finch then advised Mr. Frady that he should get a piece of rail and he and the employee should proceed to the obstruction.

It then developed that MofW Foreman Vester, of another section, had one employee under his jurisdiction living at Milan, Tennessee; one at Paris, Tennessee; and, two at Humboldt, Tennessee. Supervisor Finch located the employee at Milan, and one of the two at Humboldt, and drove them to the site where the rail had broken, after which they proceeded to work under the direction of Foreman Frady.

POSITION OF CARRIER: The point at issue in this dispute is whether carrier had the obligation to have Foreman Vester call, supervise and transport the employees sent from Milan and Humboldt. Admittedly, another foreman was not necessary at the site of the broken rail. The dispute, therefore, resolves itself into the question as to whether or not carrier was restricted—under the provisions of the agreement—from having a Track Supervisor call and transport the employees. We do not think so. The calling of employees and their transportation under such circumstances is nowise confined to those covered by the Maintenance of Way Agreement. There is no support for the position taken by the employees in this instance, and the claim should, therefore, be denied.

OPINION OF BOARD: On February 4, 1961, Carrier's Chief Dispatcher advised the Track Supervisor of a broken rail on a section assigned to Foreman Brady. Foreman Brady could locate only one employee assigned to his gang. He was instructed by the Track Supervisor to proceed with the employee and a piece of rail to the location of the broken rail. Then the Track Supervisor located two employees assigned to another gang of which Claimant was Foreman. He transported the two employees to the site of the broken rail, where they participated in making the replacement, after which he transported them back to their section.

The contentions of Petitioner are that: (1) Claimant should have accompanied the two employees from his gang and supervised their work; and, (2) the Track Supervisor supervised the replacement of the rail in violation of the Agreement.

We find nothing in the Agreement which prohibits Carrier from assigning employees from one gang to another; or, any requirement that when such assignments are made the employees must be accompanied and supervised by the foreman of the gang to which they are regularly assigned.

Although Petitioner avers that the Track Supervisor supervised the work, it has adduced no evidence in support. Carrier states that the work

was supervised by Foreman Brady. Petitioner has the burden of proof. It has failed to satisfy it.

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 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 25th day of February 1965.