

Award No. 14191
Docket No. MW-14444

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

1. The Carrier violated the Agreement when, on April 7 and 8, 1962, it assigned or otherwise permitted Section Foreman Cecil Corbett instead of Sectionman Wayman Alexander to perform the work of cleaning, filling and lighting flares which were being used in connection with the reconstruction of the highway crossing at Kentucky and Franklin Streets at Evansville, Indiana.

2. Sectionman Wayman Alexander be allowed payment on a call basis (Rules 8 (a) and 10 (b) for each of the dates mentioned in Part (1) of this claim. (Carrier's file MW-6201)

EMPLOYES' STATEMENT OF FACTS: Claimant Wayman Alexander was regularly assigned as Sectionman on Truck Gang No. 209 headquartered at Evansville, Indiana, with a work week extending from Monday through Friday (rest days were Saturday and Sunday.)

During the first part of April, 1962, Truck Gang No. 209 was engaged in reconstructing the highway crossings at Kentucky, and Franklin Streets in Evansville, Indiana, for the protection of the public during the hours of darkness, several lighted flares were placed at these reconstruction sites. On regularly assigned work days, the work of cleaning, filling and lighting these flares was assigned to and performed by sectionmen. However, on Saturday, April 7 and on Sunday, April 8, 1962, the Carrier assigned or otherwise permitted Section Foreman Cecil Corbett to perform this work.

The subject work is of the nature and character usually and traditionally performed by the Carrier's sectionmen.

The claimant, who was the senior sectionman assigned to Truck Gang No. 209, was available, willing and qualified to perform the work herein involved but was not called or notified to do so.

The Agreement in effect between the two parties to this dispute dated

the foreman has the same right to perform work as any of the other employes assigned thereto.

Not only does the foreman have a right to perform work assigned to this craft, his right to assign the employe of his choice to perform a certain task including overtime work cannot be disputed. Furthermore, if he chooses to perform the work himself, he has a right to do so. In the instant case, the foreman merely exercised this right.

The Board's attention is directed to its opinion in Third Division Award No. 5331 wherein it stated that:

"Except insofar as it has restricted itself by the collective agreement or it may be limited by law, the assignment of work necessary to its operation lies within the carrier's discretion."

In summary, the instant claim is invalid because (1) the claimant was not available to perform the work in question, (2) claimant had no inherent contractual right to perform the work, and (3) the foreman, whose seniority date in this class of service antedates that of the claimant in addition to being supervisor of Truck Gang No. 209, is also a member thereof and by virtue of so being can, in accordance with the provisions of the agreement, assign such work to any member of the gang including himself.

This claim is based upon a false premise, is not supported by the rules of the agreement and, accordingly, should be denied.

OPINION OF BOARD: The Claimant was regularly assigned as Sectionman on Truck Gang No. 209, Evansville, Indiana, with a workweek of Monday through Friday with rest days of Saturday and Sunday. During April, 1962, Truck Gang No. 209 was engaged in the performance of certain work in connection with the reconstruction of the highway crossing at Kentucky and Franklin Streets in Evansville, Indiana. During the hours of darkness it was necessary to place lighted flares at these highway crossing sites. It was necessary that the flares remain lighted during the weekend of April 7 and 8, 1962. The Section Foreman cared for and lighted the flares on the two rest days.

The Employes contend that on the regularly assigned work days, the work of cleaning, filling and lighting these flares was assigned to and performed by sectionmen. They state that by allowing Section Foreman to perform this work on the two rest days the Carrier violated Rule 10 (c) of the Agreement. Rule 10 (c) reads:

"(c) Where work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

On record page 22 Carrier summarizes its defenses: "(1) the claimant was not available to perform the work in question, (2) claimant had no inherent contractual right to perform the work, and (3) the foreman, whose seniority date in this class of service antedates that of the claimant in addition to being supervisor of Truck Gang No. 209, is also a member thereof and by virtue of so being can, in accordance with the provisions of the agreement, assign such work to any member of the gang including himself."

We must reject Carrier's first defense since this issue was not raised during the handling of this case on the property and cannot now be raised under the rules of this Board.

In the handling on the property and in their submission to this Board Carrier has relied on the Scope Rule of the Agreement. The Scope Rule is general in nature and we agree with the Carrier's position that foreman are covered by this rule.

We have held previously that special or specific rules hold precedent over the general rules of the agreement. Rule 10 (c) is specific and prevails over any general rule in the agreement.

There is no dispute that: (1) during the workweek sectionmen performed the work that was performed by the section foreman on the rest days; (2) that the Claimant was the senior sectionman on Truck Gang No. 209; and (3) the work was not assigned to an eligible "available extra or unassigned employee." Rule 10 (c) required the Carrier to call the regular employee. See Awards 13824 (Dorsey) and 14029 (Hamilton). We will sustain 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 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 by the Carrier.

AWARD

Slaim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1966.