Award No. 14422
Docket No. MW-15144

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORP.

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

(1) The Carrier violated the effective Agreement when it did not allow Assistant Extra Gang Foreman Gerald Roberts' pay at extra gang foreman's rate for work performed on various dates between March 15, 1963 and April 30, 1963, inclusive. (System Case No. 10.63 MW.)

(2) Assistant Extra Gang Foreman Gerald Roberts be allowed the difference in pay between what he did receive at the assistant extra gang foreman's rate and what he should have received at the extra gang foreman's rate for work performed on various dates between March 15, 1963 and April 30, 1963, inclusive.

EMPLOYES' STATEMENT OF FACTS: The claimant was employed as a regularly assigned assistant extra gang foreman.

On March 15, 18, 20, 21, 22, 25, 26, April 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 22, 23, 24, 25, 26 and 30, 1963, the claimant performed the customary and traditional work of an extra gang foreman when he supervised and directed the activities of the operator of bolt tightening machine HM-16 and a varying number of trackmen in performing the work of tightening bolts and of replacing angle bars and their appurtenances. The claimant was compensated for his services at the assistant extra gang foreman's rate of pay.

At no time was the claimant working with or under the supervision of any other foreman on the aforementioned dates.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: The claimant, Gerald W. Roberts, was assigned as assistant extra gang foreman of Extra Gang No. 211, with

headquarters at Bainbridge, New York. On March 15, 1963, a Boltmaster machine, designation HM-16, was assigned to this gang for use in tightening track bolts on their territory. Assistant Extra Gang Foreman Roberts was assigned by his foreman, S. Delello, to the operation of the machine in tightening bolts on the Nineveh Branch, using Boltmaster machine HM-16. There was a work equipment operator assigned to actually operate the machine, and two trackmen assigned to assist in replacing bolts, nuts, etc. The work started on March 15, 1963 and was also performed on March 18, 20, 21, 22, 25 and 26, and on April 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 22, 23, 24, 25, 26 and 30, 1963. All work was performed within the limits of the territory assigned to Extra Gang No. 211. For this service, the Organization is claiming that claimant Roberts is entitled to be paid as an Extra Gang Foreman, rather than at the rate of an Assistant Extra Gang Foreman, which he was paid.

OPINION OF BOARD: In March and April 1963 Claimant Gerald W. Roberts, a regularly assigned Assistant Extra Gang Foreman, was assigned to Extra Gang 211. Claimant supervised the work of a Work Equipment Operator and two Trackmen. On specified days the Operator used Boltmaster Machine HM-16 to tighten bolts on the Nineveh Branch. The Trackmen assisted in replacing bolts, nuts, etc.

Petitioner asserts that Claimant should have been compensated as a Foreman since (1) he did not work with or under the supervision of a foreman on the dates in question, (2) traditionally the task of supervising men engaged in bolt tightening work has been given to foremen, (3) Award 12971, on this property, constitutes a controlling precedent. In support of its contention with respect to custom and tradition, Petitioner notes that, in September 1964, in Bulletin 128.64, Carrier specified, with reference to duties of the Gang Foreman (No. 307): "New Position. For bolt tightening and other Ex. Gang Foreman duties for approximately one month's duration . . ."

Petitioner's arguments are not convincing. The record shows that Claimant worked under the general supervision of an Extra Gang Foreman who gave him instructions concerning what work was to be accomplished, the location of such work, and the like. The Foreman, not Claimant, maintained all necessary time returns and work reports. Moreover, the record shows that Bulletin 128.64, which was issued eighteen months after the complaint here, is the only occasion on which an extra gang was established for the specific purpose of tightening bolts and performing related track duties. And even there the Foreman was responsible for making out all necessary reports, so it can hardly be said that it was the task of supervising the operation of a bolt machine which prompted Carier to use a Foreman. Actually, the record reveals other bulletins, issued in 1964 before Bulletin 128.64, which list, among the duties of Assistant Ex. Gang Foremen: "New Position. For bolt tightening with Boltmaster and other Assistant Extra Gang Foreman duties . . ." (Bulletin 28.64 and 83.64). Carrier's assertion that, from 1962 when the Boltmaster Machine was first introduced, through 1964, supervision of men operating this Machine was entrusted to Assistant Foremen, with but one exception, has not been contradicted. The Board's reasoning in Award 13305, involving these parties, is persuasive and more in point than Award 12971 cited by Petitioner.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 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 12th day of May 1966.

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