

Award No. 16040

Docket No. MW-16594

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

George S. Ives, 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 Agreement when it did not allow Assistant Extra Gang Foreman Leland Glover pay at the extra gang foreman's rate for work performed on June 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30 and July 12, 13, 14, 15, 16, 20, 21, 22, 23, 26, 27, 28, 29 and 30, 1965. (System Case No. 15.65 MW)

(2) Assistant Extra Gang Foreman Leland Glover be allowed the difference in pay between what he should have received at the extra gang foreman's rate for work performed on June 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30 and July 12, 13, 14, 15, 16, 20, 21, 22, 23, 26, 27, 28, 29 and 30, 1965.

**EMPLOYEES' STATEMENT OF FACTS:** On June 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30 and July 12, 13, 14, 15, 16, 20, 21, 22, 23, 26, 27, 28, 29 and 30, 1965, Assistant Extra Gang Foreman Leland Glover was required to perform work which is commonly recognized as work which has heretofore been performed by an extra gang foreman. This work consisted of directing the activities of various employes raising and lining track at various locations on the Jefferson Branch Seniority Division for Spot Tamper PB-3 and Track Liner TL-5 and making various reports relating to said work.

On each of the above specified dates, the claimant was not working with or under the supervision of any foreman.

For this service the claimant was compensated at the assistant extra gang foreman's rate of pay.

The issue involved in the instant case is identical to the issue involved in the dispute adjudicated by this Division in Award 12971. Although the Carrier agreed to settle twenty-eight (28) similar claims on the basis of the decision of this Division in Award 12971, it would not agree to a similar settlement with respect to the instant claim.

Claim was timely and properly presented and handled by the Employees 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:** During the periods involved in this claim, Leland Glover was assigned as an Assistant Extra Gang Foreman in Extra Gang No. 203, with headquarters at Thompson, Pennsylvania. The personnel regularly assigned to the gang consisted of Extra Gang Foreman Peter Zenewicz, claimant Glover as Assistant Extra Gang Foreman, and five (5) trackmen.

On the days set forth in the claim, Glover was assigned by Foreman Zenewicz to work with certain other members of the gang in utilizing spot tamper (PB-2) in maintaining the track structure between Carbondale and Thompson, points within the assigned limits of responsibility of Extra Gang No. 403.

**OPINION OF BOARD:** The fundamental issues involved in this case are the same as those considered in our Award No. 16039, which arose out of a similar dispute between these parties under the same Agreement. Accordingly, we find Award No. 16039 controlling in this case, despite variations in dates, names and locations, which do not warrant repetitive discussion.

**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 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.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1968.

**CARRIER MEMBERS' DISSENT TO AWARDS 16039, 16040, 16041, 16042, 16043, 16044, 16045, 16046, 16047, 16048, 16049, 16050 and 16051, DOCKETS MW-16541, MW-16594, MW-16595, MW-16596, MW-16597, MW-16598, MW-16599, MW-16600, MW-16601, MW-16602, MW-16730, MW-16731 and MW-16732.**

For the same reasons that are fully and specifically enunciated in Carrier Members' dissent to Awards 15804 and 15805, Dockets MW-16108 and MW-16109, which are, by reference, incorporated herein, we dissent to these Awards.

**R. E. Black  
P. C. Carter  
W. B. Jones  
G. L. Naylor  
G. C. White**