

Award No. 16041
Docket No. MW-16595

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 Pietro Sparano pay at the extra gang foreman's rate for work performed during the period from August 2, 1965 to August 17, 1965, both dates inclusive. (System Case No. 14.65 MW)

(2) Assistant Extra Gang Foreman Pietro Sparano 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 during the period from August 2, 1965 to August 17, 1965, both dates inclusive.

EMPLOYEES' STATEMENT OF FACTS: During the period from August 2, 1965 to August 17, 1965, both dates inclusive, Assistant Extra Gang Foreman Pietro Sparano 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 employees raising and lining track between Cambridge and Whitehall, New York for Spot Tamper PB-3 and Track Liner TL-5 and making various reports relating to said work.

During the above specified period, 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: This is a companion claim to Case No. 13.65 MW involving the same claimant. Claim in Case No. 13.65 MW covered the period July 1 through July 30, 1965, while the present dispute covers the same claimant for the period August 2 through August 17, 1965.

Both claims, i.e., Cases Nos. 13.65 and 14.65 MW are continuations of claims submitted in favor of the same claimant in Case No. 12.65 MW. Carrier's ex parte submission of this dispute to the Third Division, National Railroad Adjustment Board, is dated November 7, 1966.

During the period covered by this claim, claimant Pietro Sparano was assigned as an Assistant Extra Gang Foreman under the supervision of Extra Gang Foreman John Pellegrino of Extra Gang No. 226, Whitehall, New York. During the entire period covered by this particular claim, the normal complement of Extra Gang No. 226 consisted of Extra Gang Foreman Pellegrino, Assistant Extra Gang Foreman Pietro Sparano, the claimant, and six trackmen. During the period involved in the present dispute, claimant Sparano was assigned by Extra Gang Foreman Pellegrino to work with certain members of Extra Gang No. 226 in utilizing track machinery in maintaining track structure within the assigned limits of responsibility of the gang.

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**