

Award No. 16049
Docket No. MW-16730

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DELAWARE AND HUDSON RAILROAD CORP.

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

(1) The Carrier violated the provisions of the effective Agreement when it did not allow Assistant Extra Gang Foreman Louis DeFronze pay at the extra gang foreman's rate for work performed during the period from November 2, 1965 to and including November 19, 1965. (System Case No. 11.66 MW)

(2) Assistant Extra Gang Foreman Louis DeFronze 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 November 2, 1965 to and including November 19, 1965.

EMPLOYEES' STATEMENT OF FACTS: During the period from November 2, 1965 to and including November 19, 1965, Assistant Extra Gang Foreman Louis DeFronze performed the customary and traditional work of an extra gang foreman when he directed the activities of the operators of Spot Tamper PB-7 and Track Liner TL-5 and various other employees in performing the work of raising (surfacing) and lining track at various locations on the Albany Main and, in addition thereto, made 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 that submitted by the Organization in Case 7.65 MW covering the same named claimant. The Ex Parte Submission of the Carrier in Case No. 7.65 MW was submitted to the Third Division on November 7, 1966 and covered claim of Assistant Extra Gang Foreman Louis A. DeFronze for the period April 19 to 23, 1965. In the present dispute claim has been made in favor of Louis DeFronze for services performed during the period November 2 through November 19, 1965.

During the period covered by the present dispute, claimant DeFronze was assigned as Assistant Extra Gang Foreman in Extra Gang No. 214, with headquarters at Schenectady, New York. On November 2, 1965, claimant DeFronze was assigned by his Foreman to work with certain other members of the Gang in utilizing track maintenance equipment in maintaining the track structure between Albany, New York and Delanson, New York, points within the assigned limits of responsibility of Extra Gang No. 214.

During the period involved in this claim, the personnel assigned to Extra Gang No. 214 consisted of Extra Gang Foreman Moffre, three Assistant Extra Gang Foremen, including the claimant named herein, and nine trackmen.

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 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 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**