

Award No. 16694
Docket No. MW-17161

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DELAWARE AND HUDSON RAILROAD CORPORATION**

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 Louis J. DeFronze pay at the extra gang foreman's rate for work performed during the period from November 24, 1965 to and including December 3, 1965.

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(2) Assistant Extra Gang Foreman Louis J. 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 24, 1965 to and including December 3, 1965.

EMPLOYEES' STATEMENT OF FACTS: During the period from November 24, 1965 to and including December 3, 1965, Assistant Extra Gang Foreman Louis DeFronze 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 a track equipment operator, raising track at various locations between Elnora and Delanson and on the Albany Main for Spot Tamper PB-7 and Spot Tamper PB-10 and making various reports.

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 this Division's 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 period of time covered by this dispute, claimant Louis J. DeFronze was assigned as an Assistant Extra Gang Foreman in Extra Gang No. 214, with headquarters at Schenectady, New York. For a period of seven working days occurring within the dates of claim, DeFronze was assigned by Extra Gang Foreman Moffre to work with certain members of the gang in utilizing track maintenance equipment in maintaining track structure between Elnora and Delanson, points within the assigned limits of responsibility of Extra Gang No. 214.

During the period of this claim, the personnel assigned to Extra Gang No. 214 consisted of Extra Gang Foreman Moffre, Assistant Extra Gang Foremen Mazzarella and DeFronze, and for a period of time, a third Assistant Extra Gang Foreman, namely S. Canonico. In addition to the four above named employees assigned to Extra Gang No. 214 as Foreman or Assistant Foremen, there were a total of ten trackmen assigned to the gang.

OPINION OF BOARD: During the period of November 24, 1965 through December 3, 1965, Claimant, an assistant extra gang foreman, directed the activities of spot tamperers in performing the work of raising track. Claimant seeks to be compensated for such work at the extra gang foreman's rate of pay under the provisions of Rule 18 of the Agreement between the parties which provides as follows:

"Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rate position their rate will not be changed."

Petitioner claims that the issues before this Board in the instant case have already been decided in earlier Awards, namely: Award Nos. 12971, 13264, 15804, 15805 and 16039 through 16051, and that the doctrine of "Stare Decisis" is applicable here.

An examination of all these prior Awards, as well as Award Nos. 13305 and 14422 relied on by Carrier in support of its position, support petitioner's contention that the issues before us have already been decided. Therefore, the Claim must be sustained.

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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1968.