



Award Number 17423

Docket Number MW-17404

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

- (1) The Carrier violated the Agreement when it assigned B&B Supervisor V. H. West to perform the duties of a B&B Foreman on January 3, 4, 5, 10, 11, 12, 17 and 18, 1967. (System File 1-5/E-304-5)
- (2) Cut-back B&B Foreman J. R. Tallent be allowed 64 hours' pay at the B&B foreman's rate because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant J. R. Tallen, a cut-back B&B foreman with foreman's seniority dating from July 7, 1947, was regularly assigned as a B&B carpenter during the period involved here.

On January 3, 4, 5, 10, 11, 12, 17 and 18, 1967, in addition to regularly assigned B&B Foreman Davis, the Carrier assigned B&B Supervisor V. H. West, who is not covered by the scope of the effective agreement, to direct and supervise routine maintenance work performed by the B&B gang here involved.

The claimant was available, willing and qualified to have performed this work had he been given an opportunity to do so.

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 May 1, 1960, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On the dates of January 3, 4, 5, 10, 11, 12, 17 and 18, 1967, a Bridge and Building gang, under J. H. Davis, was engaged in making repairs to a bridge. The gang was made up in accordance with Rule 41(c) which reads as follows:

Bridge and Building gangs shall consist of foreman, assistant foreman (when required by the management), carpenters, helpers, and laborers. Gangs must be adjusted so as to suit the work, seeking to have regular bridge gangs composed of equal number of carpenters, helpers and laborers.

In addition to the gang, Supervisor V. H. West was also present. In progressing the work on occasion he issued instructions to the men instead of through the foreman. Employees alleged that this was an agreement violation, that Mr. Davis should have issued all of the instructions, and filed a claim for J. R. Tallent, an extra foreman, who was working on another gang.

On the dates involved, Mr. West was properly compensated as a foreman, and Mr. Tallent, the claimant, had a regular assignment in another gang.

Carrier saw no basis for the claim and it was declined. Correspondence exchanged in connection with the claim is shown by the attached exhibits.

There is on file with the Third Division, a copy of the current working rules agreement and it by reference is made a part of this submission.

(Exhibits not reproduced)

OPINION OF BOARD: Claimant is a B&B foreman who on the above dates was working as a B&B carpenter due to cut back.

On these dates, however, a supervisor of the Carrier, not covered by the Agreement, directed and supervised employees of a certain B&B gang which is undenied.

The Organization contends that in permitting this Carrier violated the Agreement because of the work of directing and supervising this B&B gang accrued to the Claimant under the Scope Rule and could not therefore be performed by a person not covered by the Agreement.

We agree. The claim is therefore sustained. Claimant shall be allowed eight hours pay on each of the above dates at the B&B foreman's rate less what he received as a carpenter on each of said dates.

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.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1969.

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