



Award No. 18863

Docket No. MW-19225

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it compensated Walter Newcomb at the trackman's rate instead of the extra gang foreman's rate of pay for services performed on October 13, 14, 15, 16, 17 and 20, 1969. (System File MW-6904)

(2) Mr. Walter Newcomb be allowed the difference between what he should have received at the extra gang foreman's rate and what he received at the trackman's rate of pay for 48 hours because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The factual situation involved here was accurately set forth within our letter of claim presentation reading:

LETTER NO. 1

"November 20, 1969

Mr. H. Huffman, District Engineer
Chicago & Eastern Illinois Railroad
Post Office Box 76
Dolton, Illinois 60419

Dear Mr. Huffman:

At the request of Mr. Sterlin, Mr. Walter Newcomb assumed foremanship of the so-called Thrall Car Gang on October 13, 1969. He performed service on that gang on October 13, 14, 15, 16, 17 and 20, 1969. However, he was not compensated for such service at the rate of pay of an extra gang foreman and was advised by Roadmaster Brown that he would be compensated only at the trackman's rate of pay. Inasmuch as this represents a gross violation of the agreement, we are hereby presenting claim in favor of Mr. Walter Newcomb for the difference between the extra gang foreman's rate which he should

the new gang. The work record shows that Cruz was on October 20 assigned to and performed work on Gang No. 98 at Chicago Heights under the supervision of Foreman Ralston. He did not perform any work at Thrall under the supervision of claimant.

All charges for labor and material for a construction project such as here involved are charged to an AFE (Authority for Expenditure). The records show that the first charges made against the AFE covering the construction of the tracks to serve Thrall Manufacturing Company were for the unloading of material for the track construction on October 23 and 24, 1969, by Section Gang No. 98, under the supervision of Foreman E. E. Ralston. There is no record of any charges in connection with this project prior to that date, as would have been required had any work been performed.

The District Engineer declined the claim because claimant was placed at the job site for the sole purpose of instructing new employees that showed up where to report and because claimant did not perform any foreman duties whatsoever. Inasmuch as the record supported the District Engineer's decision, the General Chairman's appeal was declined.

There is in effect between the parties an agreement identified as Schedule No. 3, effective May 15, 1953.

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner contends that Claimant performed the services of an extra gang foreman in charge of the so-called Thrall Car Gang on the dates involved in the claim.

It appears from the Record that after a conference with the General Chairman, an effort was being made to recruit personnel for the establishment of a gang to construct tracks to serve the Thrall Car Manufacturing Company. During the recruitment period the men hired were directed to report to the projected work location, but until a full crew could be recruited, the newly hired employees were put to work on existing gangs in the Chicago Heights area. The Carrier advises that it was thus necessary to station someone at the Thrall location to direct the new recruits to their temporary work location.

In the handling on the property, the District Engineer advised the General Chairman that the gang at Thrall was established November 3, 1969; that Claimant had been placed at the job site to instruct any new people who showed up where to report, and denied that the Claimant performed any foreman duty whatever. The claim was then appealed to the Director of Personnel and Labor Relations, who denied it on the basis that the claim was not supported under the Agreement rules controlling.

It is well established that the burden of proving all essential elements of a claim is upon the one asserting the claim. When the Division Engineer denied that the Claimant performed any foreman duties whatever, it was then up to the Petitioner to come forward with probative evidence to support its claim. Mere assertions are not accepted as proof. Petitioner's Exhibit A is not evidence that Claimant actually supervised anyone in the performance of any work.

We find that the Petitioner has failed to meet the burden of proof required of it, and the claim will be denied for lack of proof.

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 not violated.

AWARD

Claim denied.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1971.