

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hyman Cohen, Referee

Award Number 24952
Docket Number MW-24904

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Atchison, Topeka and Santa Fe Railway Company

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

(1) The Carrier violated the Agreement when it failed and refused to allow Assistant Section Foreman I. A. Villanes pay at the section foreman's rate for the work he performed beginning November 14, 1980 (System File 160-400.25-811).

(2) Assistant Section Foreman I. A. Villanes shall be allowed the difference between what he should have received at the section foreman's rate and what he was paid at the assistant section foreman's rate beginning November 14, 1980 and continuing until the violation referred to in Part (1) hereof is discontinued.

OPINION OF BOARD: As of November 14, 1980, (the starting date of the instant claim), the Claimant was regularly assigned to the position of Assistant Section Foreman on Section Gang No. 32 headquartered at Carlsbad, New Mexico, on the Carrier's New Mexico Division. The instant dispute arises from the Carrier's refusal to compensate the Claimant at the Foreman's rate of pay.

The Organization contends that on each work day the Carlsbad Section Gang is divided into two (2) work groups. These two (2) groups are tantamount to two (2) separate Sections. It goes on to assert that the Claimant was required to supervise the work of one (1) of these groups and to complete all necessary reports.

Based upon the record, the Board finds that it is customary on the Carlsbad Section for the Section Foreman to divide the Gang into two (2) groups whereby one group may spend the day on the branch line while the other group works on the main line. On such occasions, the Claimant, under the direction of the Section Foreman, may be assigned to work with and direct the work of employees in the Section at a location separate and apart from the other employees in the Section. While assigned to such a group, the Claimant acts as the Section Foreman's agent. Moreover, under the direction of the Section Foreman, he supervises the employees who are assigned to assist him in performing the work that he has been instructed to accomplish.

There is no requirement in the Agreement that the Section Foreman must be physically present to supervise the work of all of the employes in the Gang. In Third Division Award 14835 "[I]t has been held that supervision need not be exercised at the actual site of operation ***." Furthermore, Third Division Award 13305 provides as follows:

"Here again the precedence of this Board seem to militate against upholding this portion of the claim. In Award 12310 *** it was held that a foreman can still exercise supervision some distance away from a job site and 'is not required to be in physical proximity, in order to exercise supervision over his men. See Award 6582.' See also Award 12350 ***."

As for the contention by the Organization that the Claimant performed paper work", it concedes "that, in itself, is not a defense to our claim." Indeed, the performance of record keeping duties is not exclusively reserved to the position of Foreman. Accordingly, the carrying out of such duties does not establish a basis for paying the Claimant a Foreman's rate of pay. It is incidental to his regular duties as an Assistant Foreman.

In light of these considerations Rule 40, Section (a) which provides that an employe who is engaged in more than one class of service, will be paid the rate applicable to the work for the actual time; or will be paid for the entire day, if the service in the higher class extends for four or more hours, is not applicable to the facts of this case.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.

