

SPECIAL BOARD OF ADJUSTMENT No. 293
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
versus
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM:

- (1) The Carrier violated the Agreement by increasing the track force on Section #4, Point Pleasant, New Jersey, from 10 Laborers to 20 Laborers on specified dates from June 17 through July 17, 1959, in violation of Exhibit 14 of the Agreement.
- (2) The Carrier violated the Agreement by failing to compensate Assist-and Foreman Dominick Delcurla, Section #4, Point Pleasant, New Jersey, at the Foreman's rate of pay for the services rendered on the dates referred to above.
- (3) Assistant Foreman Delcurla be now compensated for the difference between what was paid him at the Assistant Foreman's rate and what he should have received at the Foreman's rate of pay during the period referred to.

OPINION OF BOARD:

A Section Foreman and an Assistant Foreman are regularly assigned to Section #4, Point Pleasant, N. J., on the New York and Long Branch Railroad. On 11 specified days beginning on June 17 and ending on July 17, 1959 the Carrier increased the Track Laborer force assigned to this section to between 17 and 19 men, the exact number varying from day to day within this range. On each of the 11 days in question this force was split into two groups. One group worked under the immediate supervision of Foreman Santelli and the other under the immediate supervision of Assistant Foreman Delcurla -- the claimant in this case.

With respect to Part (1) of the claim, the Organization contends that Exhibit 14 of the controlling Agreement fixes the number of Laborers (including a Laborer-Driver) in the gang normally assigned to Section #4 at the level of 10 men, together with one Foreman and one Assistant Foreman, and that the Carrier is barred from unilaterally increasing the size of this gang. The Organization asserts it has been the past practice to establish an extra gang on the section when the need for additional manpower arises, instead of increasing the size of the normal gang and splitting it between the regular Foreman and the regular Assistant Foreman.

We find that Exhibit 14 fixes at 18 the minimum force of Laborers assigned to the four NY & LBRR sections combined and provides that the number of Laborers may be reduced below this figure by negotiation. There is no contract limitation on the maximum number of Laborers that may be assigned to any particular NY & LBRR section or to all of these sections combined. Moreover, no provision appears in the contract which requires the Carrier to establish an extra gang whenever the track force assigned to one of these sections is increased

above 10 Laborers. The fact that the Carrier has established extra gangs on Section #4 in the past does not mean that it has become obligated to establish an extra gang whenever, as in the instant case, day-to-day increases in the track force requirements occur.

The Organization nevertheless urges that Assistant Foreman Delcurla was required to perform the work of a Foreman on the dates covered by the claim and therefore was entitled to be paid the Foreman's rate. In urging that Delcurla was used as a Foreman, the Organization stresses the fact that on the 11 days in question the Assistant Foreman supervised a different group of Laborers than did the Foreman, that on some days the Foreman and Assistant Foreman and their respective groups were working a considerable distance apart, and that on two days (June 17 and 18) the Foreman and his group were working in an adjoining section. All of Assistant Foreman Delcurla's service was performed within Section #4 territory.

The evidence shows that on or immediately before each of the involved days, except June 17, the Foreman gave instructions to Assistant Foreman Delcurla on the work the latter was to perform with the men assigned to him. We find that Claimant Delcurla was used only as an Assistant Foreman on these days. There is no contract requirement that the Foreman work at the same location as the Assistant Foreman, nor is there any prohibition against dividing a section gang between a Foreman and an Assistant Foreman, so long as the Foreman exercises overall supervisory responsibility. The fact that the Foreman worked on an adjoining section on June 18 after having given instructions to the Assistant Foreman does not mean that the Assistant Foreman was performing the duties of a Foreman on that day.

The unrefuted testimony of Assistant Foreman Delcurla is that he was not given any instructions by his Foreman concerning the work the claimant was to have his group of Track Laborers perform on June 17, however. It does not appear that the Foreman exercised supervisor responsibility over the Assistant Foreman on this date. We conclude that Claimant Delcurla was used as a Foreman on June 17, 1959 and that he was entitled to be compensated at the Foreman's rate, instead of the Assistant Foreman's rate, on said day. The Claimant's request for the Foreman's rate for the other days must be denied.

A W A R D

Part (1) of the claim denied. Parts (2) and (3) of the claim denied in part and sustained in part as indicated in the Opinion of the Board.

(s) Lloyd H. Bailer
Lloyd H. Bailer, Neutral Member

(s) A. J. Cunningham
A. J. Cunningham, Employee Member

(s) C. S. Strang
C. S. Strang, Carrier Member