

Award No. 10
S.B.A. Case No. 10
(Third Division Docket No. 8821)

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

STATEMENT

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

- "(1) The Carrier has violated and continues to violate the Agreement in assigning Water Service Foreman's duties to Water Service Mechanics with headquarters at Huntington, La Grand, Hinkle and The Dalles, respectively;
- "(2) Messrs. M. T. Childers, A. H. Johnson, C. L. Kugler and V. G. Lane each be allowed the difference between what they were paid as Water Service Mechanics and what they should have been paid as Water Service Foremen had they properly been assigned as such to the water service units at Huntington, La Grand, Hinkle and The Dalles beginning with the first date of violation and continuing until the violation is corrected."

FINDINGS: Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

The Carrier and employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

The organization takes the position that "there is no provision, and no exception in our agreement which would permit employees in the Water Service Department to work without the supervision of a Water Service Foreman."

We believe this puts the cart before the horse. First, we should find a contract provision that requires the use of foremen to supervise the mechanics and helpers we are dealing with here, or a practice on the property that has been so mutually understood and accepted that the organization may now rightfully consider it a part of its bargain. We could labor the point at length but the fact is that we find neither.

The scope rule cited by the organization is not relevant or material to the issue before us. Rule 13 cited by the organization is not relevant or material. It sets out the pay for leading workmen and provides that they will work only under the supervision of a foreman. We have no leading workmen here involved.

Then the organization cites a Rule 52 which provides that mechanics and helpers will work under the direction of foremen. This strikes us as being relevant and very material and getting to the point, until we discover that the rule is not taken from the Maintenance of Way agreement but from the carrier's agreement with Machinists, Boilermakers, Blacksmiths, Sheet Metal Workers and Molders, Electrical Workers, Carmen, and their Helpers and Apprentices and Coach Cleaners.

There exists here an unusual arrangement by which the water service foreman works under the former agreement while the mechanics and helpers work under the latter agreement.

We doubt that we can sustain the claim of the Brotherhood of Maintenance of Way Employes when there is nothing in their own contract to support their claim and they have to rely on a provision in the contract with another Brotherhood. This organization would not be required to live up to the terms of some other agreement and we doubt that we can permit this organization to police another agreement, or sustain an award for this organization solely on the basis of some other agreement.

The carrier points out that only a very small portion of employees under the agreement with the sheet metal workers, et al., ever comes under the direction of the water service foreman in the Maintenance of Way unit.

The organization alleges further that the water service mechanics who are working without a foreman must of necessity be doing foremen's work. The conclusion does not follow. Many employees work on detached service without immediate supervision and the carrier states that the claimants are not performing any duties customarily performed by foremen or making any reports made by foremen.

The carrier here maintains that these mechanics and helpers are working on detached service and getting what instructions they need from a general water service foreman or B&B supervisor, but perform the work on their own without supervision as to the manner and method of performing it and that the mechanics do not supervise anyone except their helpers, which they may do even when working in a gang. There is some evidence to the contrary, a letter from C. L. Kugler, but it is not convincing.

A number of awards have held that it is the carrier's province to determine how much supervision is required. This appears to be an essential part of the right to manage and direct, unless limited by contract.

If we were convinced that the mechanics were actually performing work of a higher rated job within this bargaining unit, or being held responsible and accountable as a foreman is, we would be inclined to say that the carrier must pay the rate of the higher rated job and that the carrier is not entitled to obtain high rated services at low rated pay, but we are not convinced of those facts in this case.

The claim should be denied.

AWARD: The claim is denied.

Omaha, Nebraska
June 10, 1960

SPECIAL BOARD OF ADJUSTMENT NO. 313

(s) Marion Beatty
Marion Beatty, Chairman
(s) A. J. Cunningham
A. J. Cunningham, Organization Member
(s) A. D. Hanson
A. D. Hanson, Carrier Member