

SPECIAL BOARD OF ADJUSTMENT NO. 488

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKETS NOS. 5 AND 6

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

DOCKET NO. 5 - 1. The Carrier violated the effective Agreement by failing to compensate Substitute Foreman Fred C. Blake, Monongah Division, for foreman's rate of pay on June 17, 1959.

2. The Carrier shall now reimburse Substitute Foreman Fred C. Blake for the difference in what he received as a substitute foreman or trackman on June 17, 1959, and what he should have received at the Foreman's rate account of this violation."

DOCKET NO. 6 - 1. The Carrier violated the effective Agreement on June 20, 1959, by failing to compensate Substitute Foreman Guy Woodell, Monongah Division, at the foreman's rate of pay.

2. That the Carrier shall now compensate Substitute Foreman Guy Woodell for the difference in rate of pay between what he received on June 20, 1959, and what he should have received at the foreman's rate."

FINDINGS: These claims are but two in a large number of similar nature pending before this Board.

Question and Answer No. 1 of the Questions and Answers agreed upon July 29, 1959, states in part:

". . . . a substitute foreman is only a trackman. If given the responsibility of a foreman he is entitled to foreman's rate"

The Carrier has the sole responsibility to determine its own supervision. The fact that he has the title of Substitute Foreman does not make him a foreman, nor does nit entitle him to be paid at the foreman's rate every day he works.

The claim covered in Docket No. 5 is that of Claimant Fred C. Blake for foreman's rate of pay for work he performed on June 17, 1959, at points 5 to 26 miles distant from his foreman.

The claim in Docket No. 6 is that of Substitute Foreman Guy Woodell, asserting on June 19, 1959, he "worked as foreman in charge of C. R. Fox and L. D. Posey (at) Mile Post 78 plus 3 poles renewing broken end tie in joint, correcting cross level M. P. 78 plus 2 to $4\frac{1}{2}$ poles, cross level and line (at) M. P. 78 plus 17 to $19\frac{1}{2}$ poles, renewing bolts and tightening joints, cross level and line (at) M. P. 78 plus 30 to 32 poles installing bolts, tightening bolts."

Carrier concedes (tr. p. 347) that when Woodell performed this work with the other two men, Woodell's foreman was working at a point 23 miles away.

Originally, a third claim of this type was involved. It was later withdrawn from this Board when Carrier paid the claim. It, too, was from Fred C. Blake, the claimant in Docket No. 5.

On that date, Blake was assigned with two other men to correct gauge at a point 11 miles from his foreman.

The facts in these two claims with respect to the nature of the work, and the distance between the claimant's work sites and the locations of their respective foremen on the dates in question are such we believe there would have been a necessity for the assignment of someone to supervise the work.

A sustaining award is, therefore, in order to the extent of payment of the wage differential between the foreman's and trackman's rate, less any guarantee payments he may have received.

AWARD

Claim sustained in accordance with Findings.

(s) Edward A. Lynch

Edward A. Lynch, Chairman

(s) A. J. Cunningham

A. J. Cunningham, Employee Member

(s) T. S. Woods

T. S. Woods, Carrier Member

Dated at Baltimore, Md.,
this 26th day of March, 1963.