

Award No. 4436

Docket No. 4387

2-AT&SF-EW-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILROAD EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)
THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
— Coast Lines —**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Division Lineman J. E. Homewood was unjustly discharged from the service of the Carrier February 12, 1962.
2. That accordingly, Carrier be ordered to:
 - (a) Reinstate the aforementioned employee to service with seniority rights and vacation rights unimpaired.
 - (b) Compensate the aforementioned employee for all time lost resulting from the aforesaid unjust action.
 - (c) Pay the Hospital Association dues for Hospital, Surgical and Medical Benefits for all time the aforementioned employee has been unjustly held out of service.
 - (d) Pay the premiums for Group Life Insurance for all time the aforementioned employee has been unjustly held out of service.

EMPLOYEES' STATEMENT OF FACTS: Division Lineman J. E. Homewood, hereinafter referred to as the claimant, is regularly employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, in their Coast Lines communications department, as a monthly rated employee assigned as a division lineman and with the hours of assignment of 8:00 A.M. to 12 Noon, 1:00 P.M. to 5:00 P.M., Monday through Friday, Saturday and Sunday rest days.

On January 9, 1962, the claimant was involved in an accident at a road crossing with a highway vehicle.

On January 22, 1962 formal investigation was held.

“(c) Pay the Hospital Association dues for Hospital, Surgical and Medical Benefits, for all time the aforementioned named employe has been unjustly held out of service.

“(d) Pay the premiums for Group Life Insurance for all time the aforementioned employe has been unjustly held out of service.”,

made their first appearance in the instant claim when they were incorporated in letter dated November 15, 1962, addressed by President Michael Fox of the Railway Employees' Department, to Executive Secretary Sassaman of the Second Division, National Railroad Adjustment Board, advising of the employees' intention to file an ex parte submission in this dispute. Those items are accordingly barred from consideration. There is moreover nothing contained in the agreement rules which provides what is therein requested by the employees.

The National Railroad Adjustment Board has consistently recognized and held that it is without authority to consider claims which differ from those initially presented to and handled with a carrier to a conclusion on the property. See, for example, Second Division Award 1810, involving this carrier, Third Division Awards 5077, 5283, 5380, 5501, 5502, and Fourth Division Award 826. The Adjustment Board has likewise consistently held that the scope of a claim to be considered by the Board cannot exceed the scope of the claim submitted and handled on the property. See for example Third Division Awards 5436, 6100, 6135 and others.

Furthermore, in the handling of this claim on the property, the employees contended that, in addition to compensation for all time lost, Claimant Home-wood should be allowed to retain any compensation that he may have earned on the outside or with this company in any other capacity, and as moreover seemingly contemplated in Item 2 (b) of the claim as stated in Mr. Michael Fox's notification to the Adjustment Board, under date of November 15, 1962, of the employees' intention to file ex parte submission in this dispute. That contention is, of course, defeated by the provisions of Rule 33½ (d) of the controlling agreement, reading:

“(d) If the final decision shall be that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with seniority rights unimpaired, and compensated for the net wage loss, if any, resulting from said suspension or dismissal.”

The carrier states that if this claim is sustained, and the carrier emphatically asserts that the claim does not merit such consideration, nor does Mr. Home-wood even merit reinstatement, any earnings which he has had since his dismissal should be deducted from the gross earnings he would have had with the carrier if he had not been dismissed.

In conclusion, the carrier asserts that the claim is wholly without support of the Agreement rules or merit for the reasons stated herein, and respectfully requests this Board to deny the claim in its entirety.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant J. E. Homewood, a Carrier employe since January 6, 1941, was removed from his position of Lineman on February 12, 1962, following a track car accident on January 9, 1962, at the four-lane Gilbert Avenue Crossing in Fullerton, California.

The Organization contends that inasmuch as the Claimant did not violate the Carrier's Rule, he was unjustly removed from service.

The Carrier maintains that the Claimant violated "Company Rule 752-A, 1253, and the first two rules in General Notice Form 1015 Standard in Maintenance of Way Operating Rule Book."

The pertinent portions of Rule 1253, the key rule involved, are as follows:

"Switches and Highway Crossings—Operators must use extreme caution when running over switches, frogs, derails and crossings and must flag over crossings where traffic is dense. **Highway traffic has the right of way.**" (Emphasis ours.)

"Track cars must approach railroad crossings prepared to stop short of same, and unless protected by signals which are cleared for the movement and there is an unobstructed view in both directions, they must be stopped and shoved over the crossing by hand."

The Gilbert Avenue Crossing "is protected by highway or street stop and go signals. It is also protected by mechanically operated crossing gates," which are actuated when the rail tracks are occupied. However, Track Cars are insulated and do not actuate grade crossing signal devices. Consequently, Track Car Operators "must observe the safety rules in proceeding over such crossings".

The Claimant admitted in the investigation that he was familiar with Rule 1253; he also admitted that he did not stop at the Gilbert Avenue Crossing but proceeded to cross it at "5 miles per hour" without giving "Highway traffic the right of way".

Based on the facts set forth above there is no doubt that the Claimant violated a Carrier Rule. Accordingly, the Board must deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1964.