Award No. 584
Docket No. MW-676

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of E. C. Pirtle, section foreman, for pay in the difference between what he received as section foreman—$1.03½ per hour, and what he should have received as wrecker foreman at $1.20 per hour for five hours amounting to 82 cents; and of Tom Flowers and James Bowdry, section laborers, for pay in the difference between what they received as section laborers—42 cents per hour, and what they should have received as car men— $1.09½ per hour for five hours, amounting to $3.38 each; and Will Johnson, section laborer, for pay in the difference between what he received as section laborer at 42 cents per hour, and what he should have received as car man at $1.09½ per hour for three hours, amounting to $2.03, on account of assisting in clearing wreck in the Memphis, Tenn., Terminal yards during the night of October 30, 1936."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties:

"On October 30, 1936, the carrier had several cars derailed at the Mississippi Valley Barge Line in its North Yard at Memphis, Tennessee. The wrecker derrick, in charge of Wrecking Foreman McClendon and crew, was called at 4:30 P. M. to rerail the derailed cars. The derrick arrived at the North Yard about 6:30 P. M. Shortly thereafter Section Foreman E. C. Pirtle and Section Laborers Tom Flowers, James Bowdry and Will Johnson, employed on the Memphis Terminal of the Yazoo & Mississippi Valley Railroad, were called and reported to perform service in connection with clearing the wreck. The work done by these employes consisted of carrying the derrick cable and hook from the derrick to members of the wrecking crew located at one of the derailed cars, and carrying blocks and cross ties from the material car, which was a part of the wrecking equipment, to members of the wrecking crew to block up outrigger of the derrick. Below is shown the time the section foreman and section laborers were called and reported, time they completed their work and were released, time on duty, the rates of pay and total compensation they were allowed, also the rates of pay and total compensation claimed by the employes:

Name	Time Called and Reported	Time Released	Time On Duty	Rates of Pay Allowed Per Hour	Total Compensation Allowed	Rates of Pay Claimed Per Hour	Total Compensation Claimed
E. C. Pirtle	6.45 P.M.	11:45 P.M.	5 hours	$1.03½	$5.18	$1.20	$6.00
Tom Flowers	6:45 P.M.	11:45 P.M.	5 hours	0.42	2.10	1.09½	5.48
James Bowdry	6:45 P.M.	11:45 P.M.	5 hours	0.42	2.10	1.09½	5.48
Will Johnson	6.45 P.M.	9.45 P.M.	3 hours	0.42	1.26	1.09½	3.29

NOTE: The rates paid and the rates claimed are all overtime, or time and one-half rates."

that will substantiate the employes' claim that they should be paid a rate of pay covered by the provisions of any agreement other than the maintenance of way agreement.

"The carrier is well aware of the fact that none of the rules contained in the carmen's agreement applies to the employes covered by the maintenance of way agreement. However, since the employes' representative is endeavoring to apply rates of pay contained in the carmen's agreement to the employes covered by the maintenance of way agreement, the carrier deems it necessary to quote one rule taken from the carmen's agreement. Paragraph 3 of Rule 130 of the carmen's agreement reads:

> 'When needed, men of any class may be taken as additional members of wrecking crews to perform duties consistent with their classification.'

"If the employes' contention that the carmen's rules concerning rates of pay apply to maintenance of way employes, by the same token it would be necessary to apply all of the carmen's rules. Should the carmen's rules be applied, Rule 130 provides that other than carmen can be used as wrecker crews to perform duties consistent with their classification. This rule was complied with in its entirety. The section men handled blocks and cross ties, which is consistent with their classification; in fact, it is work that is ordinarily performed by sectionmen, and there has been no violation of the rules of either the maintenance of way agreement or the carmen's agreement. The section men simply performed service classified as their work and were paid the proper rate of pay for the service performed.

"The employes' representative contends the language contained in Rule 51 of the maintenance of way schedule quoted above supports the employes' claim. The carrier desires to point out that the language of Rule 51 provides that an employe working on more than one class of work four hours or more on any day will be allowed the higher rate of pay for the entire day. Rule 31 paragraph (b) provides eight consecutive hours, exclusive of meal period, shall constitute a day. These employes were not called until 6:45 P. M., after they had completed their day's work; therefore, Rule 51 has no bearing on the case.

"The facts in this case do not bear out the employes' contention that the section men performed carmen's work. Neither does the maintenance of way agreement contain any rule that provides payment of rates of pay covered by the provisions of another schedule to employes covered by the provisions of the maintenance of way agreement. On the other hand, the facts in this case bear out the carrier's contention that the employes have been properly compensated for the service performed, and we respectfully ask that the claim be denied."

OPINION OF BOARD: The parties are in disagreement as to the application of Rule 51 to the work performed. At least some of the work described has been performed in the past by section forces along with their other duties, including repairing tracks at derailments.

In the judgment of the Division there was no violation of Rule 51.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 in the judgment of the Division there was no violation of Rule 51.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of March, 1938.