

Award No. 2170

Docket No. MW-2181

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Track Laborers Gonzalo Guzman, Walter P. Stanwood and Jesus Martinez, under the provisions of Rule 49 of current Maintenance of Way agreement, be paid the difference between their respective hourly rates as Track Laborers and the daily rate of \$4.51 applicable to position of Groundman, Telegraph Department, for eight hours each on October 2, 1939.

EMPLOYEES' STATEMENT OF FACTS: Messrs. Guzman, Stanwood and Martinez hold assigned positions as Track Laborers, Maintenance of Way Department, Section 75, Bowie, Arizona, working under the supervision of Track Foreman W. E. Driskell.

October 2, 1939, these track laborers were taken from their regular assigned work and instructed by the track foreman to work with and assist Mr. A. M. Dillon, Lineman, Telegraph Department. They performed work assisting the Lineman in relocating telegraph pole line, digging post holes, handling and assisting in resetting poles.

Work performed in the Telegraph Department comes within the scope of an Agreement between the Southern Pacific Company (Pacific Lines) and System Federation No. 114, Railway Employees' Department, American Federation of Labor, Mechanical Section thereof, effective August 1st, 1936.

Under Rule 28 of the Telegraph Department Agreement effective August 1st, 1936, the basic monthly rate for Groundman is shown as \$125.00; however, to this rate has been added an increase of 5 cents per hour, or \$12.17 per month, as a result of Mediation Wage Agreement effective August 1, 1937.

Claim was submitted to the Carrier requesting payment of the Groundman rate to Track Laborers Guzman, Stanwood and Martinez for work performed in the Telegraph Department, which claim was denied.

POSITION OF EMPLOYEES: Rule 49 of Maintenance of Way Department Agreement effective September 1st, 1926, covering Track Laborers reads as follows:

"When an assigned employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate, but if required to fill temporarily, the place of an employe receiving a lower rate, his rate will not be changed."

That the claimants were not groundmen and did not perform the work of groundmen on October 2, 1939, has already been established; furthermore, the above-mentioned agreement between the carrier and employes represented by System Federation No. 114 is in no way applicable to employes coming within the scope of the current agreement.

The petitioner may cite Award No. 674 of this Division. The carrier submits that said award in no way supports the claim in this docket for the reason that the rule involved in Award 674 is in no respect similar to Rule 49 of the current agreement involved in this docket; furthermore, there is no analogy or parity between the factual situation involved in Award 674 and the factual situation in the instant case.

The carrier asserts that it has conclusively established that the alleged claim in the instant case is entirely without merit and should be denied.

CONCLUSION

The carrier respectfully submits that it is incumbent upon the Board to dismiss the claim in this docket for want of jurisdiction but in the event the Board does assume jurisdiction then the carrier respectfully submits that the claim being entirely without merit it is incumbent upon the Board to deny it.

OPINION OF BOARD: The facts in this case differ in no material respect from the facts in Docket No. MW-2179 (Award No. 2169). What was said in disposing of that dispute is equally applicable to this.

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 the carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1943.