

Award No. 2994

Docket No. MW-2951

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY CO.

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(a) That the Carrier violated the provisions of Agreement in effect by calling junior water service mechanics for overtime work on August 14th and 15th, 1943, and on September 13th and 14th, 1943, instead of calling senior water service mechanic R. M. Quisenberry, Oklahoma Division;

(b) That water service mechanic R. M. Quisenberry shall be paid the same amount earned by such junior water service mechanics as a result of such calls, to-wit:

For overtime service, August 14 and 15, 1943.....\$25.36

For overtime service, Sept. 13 and 14, 1943.....\$ 8.67

EMPLOYES' STATEMENT OF FACTS: R. M. Quisenberry, with seniority date as water service mechanic as of September 20, 1922 and E. C. Wilson, with seniority date as water service mechanic as of July 8, 1926, were both working at El Reno, Oklahoma, their assigned headquarters. At or about 3:30 P. M. August 14, 1943, trouble developed to the water crane at Mansfield, Arkansas. The water service foreman instructed E. C. Wilson, the junior of the two water service mechanics, to take the truck with necessary tools and material, drive to Oklahoma City and pick up B. M. Campbell, water service mechanic with seniority date as of June 5, 1923, and take Campbell with him to Mansfield to assist in making repairs to the water crane. Wilson left El Reno at 4:00 P. M. and drove to Oklahoma City, picked up Campbell and proceeded to Wister, Oklahoma, arriving there at 12 Midnight. He tied up at Wister for the night, leaving there at 8:00 A. M. on Sunday, August 15, and drove to Mansfield, made the repairs to the water crane and drove back as far as Shawnee, Oklahoma that night, arriving there at 8:00 P. M. Wilson worked 19 hours as the result of that call, for which he was paid at overtime rate.

At 5:00 P. M. September 13, 1943, some emergency service was required at the passenger station at El Reno. Senior water service mechanic R. M. Quisenberry was available for that service, but instead of calling him, water service mechanic Herbert Riddle, with seniority date as of December 21, 1942, was called and worked three hours in connection with the emergency repairs to the distillate pump at the passenger station. He was then instructed by the water service foreman to report for work at 4:00 A. M. on the morning of September 14th. Riddle reported at 4:00 A. M. and worked until 7:30 A. M.,

Quisenberry was senior to the water service mechanic whom the Carrier actually assigned in the performance of this overtime work. By thus assigning a junior water service mechanic to that work, the Carrier deprived the senior water service mechanic, R. M. Quisenberry, of an opportunity to earn some additional money to which he was justly entitled on the basis of his seniority rights, and we maintain that the Carrier thereby violated the terms of the Agreement in effect, particularly the rules above quoted. We therefore maintain that the claim here presented is just and reasonable and we respectfully request that it be allowed.

CARRIER'S STATEMENT OF FACTS: On August 14, 1943, about 3:00 P. M., Water Service Mechanic Wilson, headquarters El Reno, Oklahoma, was instructed to go to Mansfield, Arkansas to repair water crane. He was accompanied by B. M. Campbell, another water service mechanic. Wilson left El Reno at 4:00 P. M. during his regular tour of duty 8:00 A. M. to 5:00 P. M. After repairs were made on August 15, Wilson then drove to Shawnee, Oklahoma on August 15, 1943.

R. M. Quisenberry, Water Service Mechanic in the same gang, on this date, with same assigned hours at Wilson, was working on his regular assignment and, in addition, worked overtime 5:00 P. M. to 6:30 P. M. at El Reno on August 14, while Mr. Wilson was en route with truck, and on Sunday, August 15, while Wilson was en route from Mansfield to Shawnee, Mr. Quisenberry worked at El Reno 10:00 A. M. to 11:30 A. M., for which he was paid a call.

On September 13, 1943, Herbert Riddle, Water Service Mechanic in the same gang, worked 5:00 P. M. to 8:00 P. M. at El Reno, repairing a pump, and on the morning of September 14, 1943, also worked 4:00 A. M. to 7:30 A. M.

All employees mentioned have headquarters at El Reno, assigned hours 8:00 A. M. to 5:00 P. M.

POSITION OF CARRIER: Apparently the question involved here is whether or not overtime work is to be performed by employees on a seniority basis.

We presume they will advise your Board in their ex parte submission of the rules which they allege support their claim. We asked the employees' representatives on December 31, 1943, and again on November 9, 1944, for reference to rules on which this claim is made. We have had no reply to these inquiries.

We therefore request oral hearing and an opportunity to reply to any and all allegations made by the employees.

OPINION OF BOARD: The question here presented may be brought into closer perspective by restating the pertinent facts.

On August 14, 1943, Claimant Quisenberry, with seniority date of September 20, 1922, and E. C. Wilson, with seniority as of July 8, 1926, both water service mechanics with headquarters at El Reno, Oklahoma, were engaged in working their regular 8:00 A. M. to 5:00 P. M. tours of duty at that point. About 3:30 P. M., Wilson was dispatched to Mansfield, Arkansas, to repair a water crane, on which work he accumulated 19 hours overtime on that and the succeeding days. Meanwhile, Claimant, who was qualified and available for the job at Mansfield, completed his day at El Reno and worked overtime on the same position from 5:00 P. M. to 6:30 P. M. of that day, and from 10:00 A. M. to 11:30 A. M. on the day following, which was Sunday, for which he was allowed a call. Subsequently, on September 13, 1943, Herbert Riddle, with seniority date of December 21, 1942, who was likewise a water service mechanic and a member of the Claimant's gang, with the same headquarters and assigned hours, was directed at 3:00 P. M. to make emergency repairs on a pump in the passenger station at El Reno. This work not having been completed at the end of his regular tour of duty, Riddle was ordered to continue work from 5:00 P. M. to 8:00 P. M., on September 13, and again from 4:00 A. M. to 7:30 A. M. on the following day, for which he was paid for 6½ hours at overtime rate. Claimant Quisenberry was, likewise, qualified and available for this overtime work.

Relying upon Rules 2 (a) and 3 (c) of the effective Agreement, Petitioner claims compensation for Quisenberry as the senior employe, at the overtime rate, for the 19 hours worked by Wilson and the 6½ hours worked by Riddle. This is predicated upon the theory that it is settled that a proper interpretation of the Rules requires a holding that, without exception, the senior qualified and available employe of the class or unit is entitled, as of right, to all overtime work thereon which he is able and desires to perform, in preference to any other employe whose seniority is junior to his.

Carrier asserts, on the other hand, that the question here presented is one of first impression, and that it should be held that when a junior employe is regularly engaged during his assigned hours in work with respect to which overtime becomes necessary, the foreman in charge may, without disrupting his force, utilize such junior employe for such overtime work at the conclusion of his regular tour of duty, instead of first offering it to the senior employe who, though qualified and available, is then engaged in his regular tour of duty or in overtime work of shorter duration.

Early in its life, this Board declared in Award No. 105 that:

"* * * Seniority rights are one of the foundations of the Agreement as well as all agreements of similar character. Every reasonable interpretation giving recognition to the seniority rule should be given, especially when sufficient fitness and ability are admitted by the carrier and other circumstances or exceptions as provided in the agreement do not intervene."

Again, it was said in Award No. 2341:

"One of the paramount purposes of collective agreements in railroad service is the establishment and protection of seniority rights * * * It is well known that regular assigned employes often desire and are often required to do extra work outside of their regular assignment, generally at an increased rate of pay. This work may be said to be incidental to their regular assignment in the sense that it would not be available to them except for the regular assignment. We think that the Agreement properly interpreted in the spirit in which it was written requires the Carrier, when it is obliged to call extra men from an established class of employes, to take notice of their seniority rights. And this is true even if the Carrier was not required to call any one of that class of employes at all."

And in Award No. 2716, this Division, in construing the language found in the concluding sentence of Rule 2 (a) here before us, said:

"We are of the opinion that this rule applies to all positions, whether it be a regular bulletined position, a temporary position or one that is required to be performed only with overtime work."

In view of these long and well-established precedents, frequently cited and relied upon in subsequent Awards, we must conclude that it would be nothing short of a case of administrative agency assuming to re-write the agreement for us to engraft upon it the exception urged by the Carrier. We are not unmindful that the effect of our conclusion may be to subject the carrier to burdens, and to render more exacting duties of its responsible supervising officials than would otherwise be required; but we find nothing in the Agreement, in the precedents of this Board or in reason that would warrant us in relieving the Carrier of its contractual obligation to respect the valuable seniority rights of the employes, because of such considerations. Award No. 2735, called to our attention by the Carrier, involved the performance of overtime work on a position that was not exclusively within the scope of the agreement there before us and is of no persuasive force here.

We deem it proper, however, to call attention to the fact that the Carrier should have credit for the wages paid the Claimant for work performed by him during the periods when he was deprived of the overtime to which he was entitled.

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 subject to the condition indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 29th day of November, 1945.