

Award Number 3095
Docket Number MW-3124

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Charles Bagby and Joe Bailey, section laborers, Springfield Division, assigned to work with a bridge and building crew for four days during the month of March 1944 shall, under the application of Schedule Rule 51, be paid the difference between what they received at Section Laborer's rate of pay and that which they should have received at bridge and building helper's rate of pay for four days from March 22 to 27, 1944, inclusive.

JOINT STATEMENT OF FACTS: Charles Bagby and Joe Bailey, regularly assigned section laborers, Springfield Division, El Paso section, were called to flag for Bridge and Building gang at Kappa, Illinois, March 22, 23, 24 and 27, 1944, being paid for this service at section laborers' rate of pay.

There is in effect between the parties an agreement bearing effective date of September 1, 1934, which is by reference thereto made a part hereof.

POSITION OF EMPLOYES: As stated in Joint Statement of Facts, Charles Bagby and Joe Bailey were regularly assigned as section laborers on the El Paso Section, Springfield Division. During the four day period March 22 to 27, 1944, inclusive, these two men were called upon and instructed by the Carrier to leave their section work and work with a bridge and building crew working on the district. For services rendered in this bridge and building crew, Section Laborers Charles Bagby and Joe Bailey were paid the regular rate applicable to section laborers. These men claim, and we agree with them, that during the days they worked in the bridge and building crew, they should be paid at the rate applicable to bridge and building helpers. This, their claim, is supported by Schedule Rule 51, reading:

"COMPOSITE SERVICE

Rule 51. An employe working on more than one class of work four (4) hours or more on any day will be allowed the higher rate of pay for the entire day. When temporarily assigned by the proper officer to a lower-rated position, his rate of pay will not be reduced."

Rule 51 is very clear and specifically provides that where an employe who is regularly assigned in a certain position is called upon to perform work in a higher rated position for four hours or more on any day, he shall be allowed the rate applicable to such higher rated position for the entire day. In the

the interpretation of the agreement must be negotiated by and between the parties.

OPINION OF BOARD: The Carrier contends that the claim here made is barred by the provisions of Rule 26 (a) of the current Agreement for failure to make a written claim within ten days. That rule is as follows:

"An employe disciplined or who feels unjustly treated, shall upon making written request to the immediate superior officer within ten days from date of advice or occurrence, be given a fair and impartial hearing within ten days thereafter and a decision will be rendered within twenty days after completion of hearing. Such employe may select not to exceed three representatives of his own choice to represent him at the hearing."

This Board has held many times that this and similar rules do not operate as cut-off rules on claims for the recovery of compensation alleged to be due under the applicable agreement. In Award 2811, in which the parties are the same as in the present case, we said:

"Without laboring the question we hold that the provisions of such rule (26-a) do not contemplate the barring or cutting off of claims of the character here involved."

Other awards of this Division to the same effect are: 1060, 1403, 1839, 2611 and 2925.

It appears that the only matter considered on the property was whether Rule 26 (a) was a cut-off rule. There has never been a conference or other consideration of the case on its merits on the property. This makes it necessary to remand the case for further handling.

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 Rule 26 (a) of the current Agreement is not a cut-off rule and that a handling on the merits has not been had on the property.

AWARD

Claim remanded for consideration on the merits on the property.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1946.