

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) That Section Laborer J. W. Walz, Clifton City, Missouri, instead of junior Section Laborer E. M. Ellison, employed at that point, should have been assigned to work in connection with patrolling of track on certain Sundays and holidays during the period November 26, 1944, to April 29, 1945;

(2) That J. W. Walz shall be paid at the rate of time and one-half for the same number of hours as that to which E. M. Ellison was erroneously assigned to work on Sundays and holidays during the period November 26, 1944, to April 29, 1945.

EMPLOYEES' STATEMENT OF FACTS: During the period November 26, 1944, to April 29, 1945, Section Laborer E. M. Ellison, Clifton City, Missouri, was assigned to patrol track on certain Sundays and holidays. Section Laborer J. W. Walz, who is senior to Section Laborer E. M. Ellison, was held out of service on the dates when Ellison was assigned to patrol track.

Agreement between the parties is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Article 3, Rule 1, of the current agreement, provides as follows:

"ARTICLE 3. SENIORITY.

Rule 1. Seniority begins at time employee's pay starts in the respective branch or class of service in which employed, transferred or prompted and when regularly assigned. Employees are entitled to consideration for positions in accordance with their seniority ranking as provided in these rules."

It will be noted that Article 3, Rule 1, above quoted, provides in part, "Employees are entitled to consideration for positions in accordance with their seniority ranking as provided in these rules."

Article 3, Rule 7, of the current agreement, provides as follows:

"ARTICLE 3. SENIORITY.

Rule 7. Section laborers employed on a vacancy or new position twenty-one (21) or more consecutive working days shall be

"(a) Employees notified or called to perform work not continuous with the regular work period, will be allowed a minimum of two (2) hours and forty (40) minutes for two (2) hours and forty (40) minutes work or less at time and one-half rate. If held on duty in excess of two (2) hours and forty (40) minutes, time and one-half rate will be allowed on minute basis."

Both rules specifically state and apply to "Employees notified or called to perform work * * *" and who perform certain amount of work or less under certain conditions, and do not specifically state and apply to employees not notified or called to perform work and who do not perform any work, or employees who should have been notified or called and required or permitted to perform any work. The absence of such specific agreement provisions clearly and unmistakably show the intent and meaning of the rule and refute the claim.

As shown in Carrier's Statement of Facts claim of J. W. Walz was not presented until May 4, 1945, or more than sixty (60) days from the date of events or circumstances on which the claim is based, and under the provisions of Supplement to Agreement, effective February 1, 1928, dated July 8, 1940, providing as follows, this claim is not valid and should be denied:

"It is agreed that claims of employees which may arise under agreement between the undersigned effective February 1, 1928, as well as understandings, agreements and interpretations supplemental thereto, shall not be subject to monetary recovery unless presented within sixty days from the date of events or circumstances on which the claim is based."

The Carrier respectfully requests that the Board deny the claim.

OPINION OF BOARD: The claim in this case hinges on whether Ellison left the service January 31, 1944 to enter the armed forces. This point is in controversy. We think the evidence indicates that he did leave for that purpose. There is no evidence he performed other service between that date and April 29, 1944, the date he was inducted into military service. Under the facts and circumstances of this particular case the claim should be denied.

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 Employees involved in this dispute are respectively carrier and employees 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 claim will be denied in accordance with Opinion.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1947.