

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
MISSOURI PACIFIC LINES

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

- (1) That Foreman T. G. Hawkes, Jr. was dismissed from the service of the Carrier on August 2, 1946, without a good and sufficient reason;
- (2) That Foreman T. G. Hawkes, Jr. be reinstated to the service of the Carrier with his seniority rights unimpaired and his record cleared of the charges resulting in this dispute;
- (3) That Foreman T. G. Hawkes, Jr. be compensated for all monetary loss suffered by him because of his improper dismissal.

OPINION OF BOARD: This is a discipline case. No violation of rules is involved. Briefly, the facts upon which the Carrier's action was predicated are as follows: Claimant, one T. G. Hawkes, Jr., was an extra gang foreman. On March 1, 1946, Carrier entered into a contract with Hawkes for the use and hire of his truck in which it was provided, among other things, that Hawkes was to deliver the vehicle to Lessee at Lessee's depot at San Benito, Texas, or any other point designated by Carrier's representative not later than 7:00 A.M. on each and every day during which Carrier may have use for same. For all this service Carrier agreed to pay Hawkes \$15.00 per day and Hawkes agreed to pay all expenses of operation and storage. At that time Hawkes' gang was performing work at San Benito and also at Brownsville, about 19 miles south of San Benito, and the gang was headquartered at San Benito. Sometime subsequently the gang was moved to Raymondsville, some 27 miles north of San Benito and performed most of its work at Sarita, about 49 miles north of Raymondsville. In Carrier's Statement of Facts it appears that the established headquarters of the gang was not changed to Raymondsville until July 19, 1946, although it was admitted by Carrier's Roadmaster on the hearing held July 22, 1946 that prior to July 19, 1946 the gang was working out of Raymondsville and that Hawkes and the gang were going to and coming from Raymondsville on their own time. Sometime about the middle of July 1946 the Division Engineer received a handwritten letter bearing no signature but the printed words "Extra Gang X No. 5," complaining that Hawkes was charging the men \$8.00 per month each for taking them to work. After receiving this letter the Division Engineer brought it to the attention of Hawkes who explained by letter dated July 18, 1946, that his gang was moved from San Benito to Raymondsville some months ago to perform work at Sarita, that when they first moved to Raymondsville he hired aliens there and was permitted by immigration officials to take them to Sarita, that this permission was revoked, that he then went to San Benito

and attempted to persuade the men who had worked for him there to move to Raymondsville but they wouldn't move, that after lengthy conversation it was agreed that he would transport them to Raymondsville for \$2.00 each per week so that they could still live at San Benito. After receipt of Hawkes' explanation a hearing was held which resulted in Hawkes' dismissal "account assessing charges against extra gang laborers for transportation between San Benito and Raymondsville without authority."

At the hearing no one of the laborers could identify the anonymous letter and each indicated his satisfaction with the arrangement and admitted that no charges were made for transportation except when the gang worked at Sarita out of Raymondsville and that that charge covered transportation from San Benito to Raymondsville. It was also established at the hearing that they left San Benito at 6:00 A. M. during this time and arrived at Raymondsville not later than 7:00 A. M. By questioning at the hearing it was obvious that Mr. Hawkes' defense was that when they moved his gang to Raymondsville that was headquarters and that it became the designated place for delivery of the truck. Carrier's officials evaded a direct answer as to whether or not Raymondsville was headquarters and insisted that the contract said that the truck would be delivered at San Benito or any other point not later than 7:00 A. M. and that it did not make any difference where the men came from the truck started from San Benito and the contract provided San Benito or any other point designated.

We do not believe that the facts brought out on the hearing warranted the action of the Carrier in this instance. Obviously, the purpose of the Carrier's contract with Hawkes was to transport the gang from San Benito (which was headquarters at the time) or any other designated headquarters to the place of work and return to headquarters. There was no evidence produced on the hearing which would indicate that the Claimant was charging these laborers for any service for which he was already being paid by the Carrier. It is obvious that the headquarters of the gang was moved to Raymondsville during the time in question and that whether specifically designated as headquarters or not, insofar as Hawkes was concerned that was the place under the contract to which he was liable to deliver his truck. The working time of the crew was to start at 7:00 A. M. at Raymondsville and he was justified in assuming that when his gang was moved thereto that became the designated place, pursuant to the terms of his contract. When he was transporting aliens from Raymondsville to the place of the work at Sarita so far as appears from the record it was not contended by the Carrier that the truck had to be brought back and forth from San Benito. Why then should Hawkes feel there was an additional liability under the contract when he found it necessary to transport his crew from San Benito, particularly when it was outside the time specified in his contract (we hold that the language not later than 7:00 A. M. in the contract specified the time of delivery of the truck and did not confer a right upon the Carrier to require delivery of the truck at any unreasonably earlier time prior to 7:00 A. M. that it saw fit), and when all time spent in travel from San Benito to Raymondsville and return was outside of regular working hours for both him and the members of the gang.

There is no evidence of overreaching on Hawkes' part or that he tried to hide anything from his employer. On the whole we believe that the Carrier acted capriciously or arbitrarily in this matter and accordingly hold that the claim should be sustained.

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 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 because the Carrier acted capriciously and arbitrarily, the claim is sustained and it is ordered that the record of the Claimant be cleared of the charges preferred against him.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1948.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 4149
DOCKET MW-4100

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way Employees

NAME OF CARRIER: Missouri Pacific Lines

Upon the application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In the above award we had before us the claim of one T. G. Hawkes, Jr., which claim read:

"Claim of the System Committee of the Brotherhood:

(1) That Foreman T. G. Hawkes, Jr. was dismissed from the service of the Carrier on August 2, 1946, without a good and sufficient reason;

(2) That Foreman T. G. Hawkes, Jr. be reinstated to the service of the Carrier with his seniority rights unimpaired and his record cleared of the charges resulting in this dispute;

(3) That Foreman T. G. Hawkes, Jr. be compensated for all monetary loss suffered by him because of his improper dismissal."

After consideration of the issues presented by the docket, we issued an award sustaining the claim as presented. Now in an application for an interpretation, we are called upon to determine whether or not Carrier is entitled to a deduction for outside earnings of the employe in computing the money payment due him pursuant to that award.

Many awards of the First Division and some of this Division have been cited to us on the meaning of the phrase "pay for time lost." In some of the awards of the First Division learned Referees have discoursed at length on the subject, and their scholarly dissertation have lead them to conflicting conclusions. No definite rule has been evolved from those awards. The result is that even if they were to be considered binding upon this Division (which they are not), they would be of very little help in determining the instant question.

It is to be noted that our Award sustained a claim for "all monetary loss". This wording was not ours nor the Carrier's. It was the Employees'. Now then, we believe that the phrase "all monetary loss" has a meaning distinct from "pay for time lost". Without indicating our concurrence or non-concurrence with the conclusions reached by other Referees as to the meaning of the phrase, we can see that there is room for an interpretation that the "time lost" refers to time lost in working for the particular Carrier against whom the claim is asserted. Here, however, the claim is for "monetary loss" and in sustaining the claim as submitted, we intended for it to have effect in accord-

ance with the commonly accepted meaning to be ascribed to the term which we (mistakenly it seems) thought to be clear. The "monetary loss" suffered by an employe who is deprived of an opportunity to earn money at his regular wage or salary is the amount of money he would have earned from his regular wage or salary plus such increases as may have accrued to the position during the time the employe was so held off his regular position less the amount of money earned in wages and salary during regular hours in other gainful employment. The Carrier is therefore entitled to deduct the latter amount from the amount of wages or salary which would have accrued to Claimant had he not been held off his regular assignment.

Referee Francis J. Robertson, who sat with the Division as a Member when Award No. 4149 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 19th day of July, 1949.