

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

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

(1) That the Carrier violated the agreement by not compensating Section Laborers E. B. Hughes, M. L. Knight, Fred Manager, Ross Woody, and Norman Knight at Truckman's rate of pay for their services rendered while assisting in rerailling two cars on the brick track at Fort Smith, Arkansas, on January 8, 1948:

(2) That the claimants named above be reimbursed for the difference in compensation received at their Section Laborer's rate and what they should have received at the Truckman's rate for services rendered as specified in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On January 8, 1948, the Carrier assigned Trackmen E. B. Hughes, M. L. Knight, Fred Manager, Ross Woody, and Norman Knight (all members of Section Crew Number 14), to the rerailling of two freight cars on the Brick Track at Fort Smith, Arkansas.

These above-named Trackmen worked from 8:00 A. M. to 4:30 P. M., carrying and placing the necessary blocking and jacks in order to perform their assignment. After the cars were successfully rerailled at approximately 4:30 P. M., these Trackmen worked about one (1) more hour in repairing the damaged track.

For their services rendered on this assignment, they were paid their regular Trackman's rate of pay.

Three Carmen worked on this same assignment, in addition to the five Trackmen, on January 8, 1948.

The Agreement between the parties of this dispute dated August 1, 1938, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The Agreement contains Composite Service Rule 28 which states as follows:

"COMPOSITE SERVICE Rule 28. An employe assigned to work on a higher rated position thirty (30) minutes or more, but less than one (1) hour, will be allowed the higher rate for the full hour, and thereafter will be paid the higher rate on the minute basis for the full time worked on the higher rated position."

It appears the employees are claiming hours in excess of the actual time consumed in assisting to rerail car.

8. The attention of this Division is also directed to Award No. 584, Docket No. MW-676 dated March 9, 1938, which is quite similar to this case.

Following is the Opinion of the Board in Award No. 584:

"The parties are in disagreement as to the application of Rule 51 to the work performed. At least some of the work described has been performed in the past by section forces along with their other duties, including repairing tracks at derailments.

In the judgment of the Division there was no violation of Rule 51."

9. The facts in this case do not bear out the Employees' contention that the section laborers performed carmen's work, neither does the Maintenance of Way Agreement contain any rule that provides payment of rates of pay covered by the provisions of another schedule to employees covered by the provisions of the Maintenance of Way Agreement. The facts in this case do bear out the Carrier's contention that the employees have been properly compensated for the service performed.

10. It is apparent that the alleged claim set up in the System Committee's ex parte Statement of Claim involves a request for a new rule. As the granting of new rules is a power which the Board does not possess under the law by which it was created, it is obvious that the contention of the committee should be dismissed.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood contends Carrier failed to properly pay the Claimants for the services they rendered it on January 8, 1948. It asks that they be paid for the work performed on that day between the hours of 8:00 A.M. and 4:30 P.M. at Truckman's rate of pay. Claim is made for the difference between Truckman's rate of pay and the rate of a section laborer, the rate at which they were actually paid.

As to the Carrier's contention that this Division is without jurisdiction under The Railway Labor Act, we find it to be without merit. Here recovery is sought under Rule 28 of the Brotherhood's Agreement. This Agreement is properly before us as the employees covered thereby are within those referred to in Section 3. First, (h) as coming within the jurisdiction of this Division. Rules of the Shop Craft (Carmen) Agreement are here used not for the purpose of determining the rights of any carmen thereunder, of which this Division does not have jurisdiction, but as evidence of the classification of the work here performed by these employees and the rate which Carrier has contracted to pay for the performance thereof, for which Claimants seek recovery under the rules of their own agreement. For similar holdings see Awards 674, 1544, 1598, 2169, 3489 and 4139 of this Division.

Rule 28 of the parties' Agreement provides:

"An employee assigned to work on a higher rated position thirty (30) minutes or more, but less than one (1) hours, will be allowed the higher rate for the full hour, and thereafter will be paid the higher rate on the minute basis for the full time worked on the higher rated position."

The record discloses that on January 8, 1948 P. R. R. Car No. 62802 was derailed on the Acme Brick Company track at Fort Smith, Arkansas, which track was within yard limits. Carrier called three carmen and five section men, Claimants herein, to rerail the car. These men worked from 8:30 A. M. to 4:15 P. M. so doing. The section men carried and placed the necessary blocking and jacks, assisted in operating the jacks, and generally helped the carmen in rerailing the derailed car. We find that they did carmen's

work in helping these carmen, to which work they had been assigned by Carrier. For similar holdings see Awards 674, 2094, 2095, 2169, 2337, 2703 and 4077 of this Division.

While claim is here made for Truckman's rate of pay the work performed was actually that of carmen. However, the Carrier is not in position to object because it appears the rate claimed is actually lower than that to which the Claimants would have been entitled and Carrier is not injured by reason thereof. Since the work of rerailing the car was done between 8:30 A. M. and 4:15 P. M. the claim being made under Rule 28, should only be allowed for the hours worked during this period of time.

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 but limited to the hours of service performed between 8:30 A. M. and 4:15 P. M.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.