

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE.

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
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 the Carrier violated the Agreement by assigning to employees not covered by the Scope of the Agreement, work coming within the scope of the effective agreement.

(2) That Ditcher Fireman Charles Parr and Jesse Sutter be reimbursed for all monetary loss suffered by them because of this violation of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Prior to September, 1946 the Fireman assigned to a steam powered ditcher customarily reported for work one hour in advance of the starting time in order to build a fire in the boiler, get up steam and oil the ditcher so that this equipment would be thus ready for operation at the beginning of the regular work period.

But as of September 1946, the Carrier changed its customary practice and assigned Engine Watchmen to the performance of this preparatory work on the ditchers at San Marcos, Texas.

As a result Ditcher Firemen Charles Parr and Jesse Sutter were thus deprived of this one hour of overtime work on their assignment as Ditcher Firemen at San Marcos, Texas.

Engine Watchmen is a position not covered by the Scope of the Brotherhoods Agreement with the Carrier.

The Agreement between the parties to the dispute dated February 1, 1928 with revisions to July 1, 1945 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Article 1 of the Agreement states as follows:

"ARTICLE I. SCOPE.

Rule 1. These rules, in their entirety, constitute an agreement between the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas and the Brotherhood of

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: The Committee contends that prior to September 1946 the fireman assigned to a steam powered ditcher usually reported for work one hour in advance of the starting time to build a fire in the boiler, get up steam, and oil the ditcher so it would be ready for operation at the beginning of the regular work period; that beginning as of September 1946 Carrier changed this practice and had an engine watchman, a position not covered by the Brotherhood's Agreement, perform this work; and that, by so doing, Carrier violated the Scope of their Agreement.

Based on this contention the Committee makes a claim for Ditcher Fireman Charles Parr and Jesse Sutter, regularly assigned firemen on ditchers, for all monetary loss suffered by reason thereof.

Article 1, Scope, of the Brotherhood's Agreement contains the following rules:

"Rule 1. These rules, in their entirety, constitute an agreement between the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas and the Brotherhood of Maintenance of Way Department, namely."

"Rule 4. Operators and Helpers on machines in the Maintenance of Way Department (Pile Drivers, Steam Shovels, American and other Ditching Machines, Derricks, Clam Shells, Weed Mowers and Destroyers, Spreaders, etc.). Also Firemen and Watchmen on such machines."

The record discloses that during August 1946, while the ditcher was being used in connection with rail laying operations on the San Antonio Division, the ditcher was tied up at San Marcos, Texas. This rail laying was Maintenance of Way work and within the scope of the Brotherhood's Agreement. While tied up at San Marcos an engine watchman, who took care of the locomotives during the night and prepared them for service for the next day, built a fire in the ditcher and had it ready for service for the next day.

We find that under Rule 4 the scope of ditcher fireman's work includes that of firing and oiling the ditcher, preparatory to actually placing it in operation, as well as doing so while it is in operation.

There was only one ditcher involved in these operations. It appears that claimant Charles Parr was regularly assigned as a ditcher fireman whereas that claimant Jesse Sutter was regularly assigned as a ditcher laborer but used as a ditcher fireman only when the regular occupant of that position was off. In view thereof the claim should be allowed for claimant Parr on each of the days he worked as ditcher fireman on this ditcher when it was prepared for service by an engine watchman. It should be allowed for the time he lost by reason thereof at overtime rate. The claim should be allowed for claimant Sutter on each of the days he worked as ditcher fireman on this ditcher when it was prepared for service by an engine watchman. It should also be allowed for the time lost by reason thereof at the overtime rate. See Article 9—Rule 2.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained for claimant Parr on each day he worked as ditcher fireman on this ditcher when it was prepared for service by an engine watchman and for claimant Sutter on each day he worked as ditcher fireman in this ditcher when it was prepared for service by an engine watchman, the claimants to be compensated at overtime rate for all time actually lost by reason of the engineman preparing the ditcher for service while it was tied up at San Marcos, Texas.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of September, 1949.