

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 effective agreement when it assigned System Bridge Gang Carpenter H. M. Harrell to perform first class ironworker's duties at North Little Rock, Arkansas from November 17 to November 29, 1947, both dates inclusive, and failed to compensate him at the proper rate of pay;
- (2) That System Bridge Gang Carpenter H. M. Harrell be allowed the difference in pay between what he did receive as a Bridge Carpenter and what he should have received at the First Class Ironworker's rate of pay while assigned to perform the work referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: During the period November 17 to November 29, 1947, Carpenter H. M. Harrell was assigned to assist Ironworkers who were erecting Maintenance of Way Work Equipment Shop at North Little Rock, Arkansas.

Carpenter H. M. Harrell is regularly employed as a second class carpenter. During the period of time for which claim is being made, Harrell was assigned to work which consisted of hanging steel, assembling various structural steel members, and bolting and pinning them in place.

During the period of time for which claim is being made, one of the regular first class Ironworkers, C. B. McKay, was on vacation.

Claim in behalf of H. M. Harrell for the difference between what he did receive at the carpenter's rate of pay and what he would have received had he been paid the first class Ironworker's rate of pay, was filed with the Carrier.

The claim was declined.

The agreement in effect between the two parties to this dispute, dated July 1, 1938, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 28 of the effective agreement reads as follows:

There is no indication from the facts that Claimant Harrell was burdened or overtaxed, and there is no evidence that he performed over 25% of Mr. McKay's work—indeed there is no indication anyone performed any portion of it, as the nature of the work being performed by that portion of System Bridge Gang No. 6 used on the Work Equipment Shop is not susceptible to accumulation when one or more members of the gang is absent. The only result of such absence which it could be said might occur would be merely a prolongation of the time required to complete the task assigned to them, which could not be said to constitute a burden.

Under the facts in this case, there are no provisions in the applicable agreements which required the Carrier to fill the position of Iron Worker McKay during the period he was absent taking his vacation.

The claim as presented to your Board does not cover the same period as the claim which was presented on the property, progressed on appeal to the Chief Personnel Officer, and declined by him. The claim presented and progressed on the property was for the period November 1 to November 30, 1947, the entire period System Bridge Gang No. 6 was used at the Work Equipment Shop building site.

The Carrier has not been advised by the Employees upon what basis this claim is to be presented, except such information as is contained in the Employees' Statement of Claim.

For that reason the Carrier requests the privilege of making an additional submission in the event the Employees present additional questions not dealt with in this submission.

All matters contained in the claim as presented on the property, that is, period from November 1 to November 30, 1947, have been discussed in conference or correspondence between the parties.

This claim is wholly without merit, without support under the working agreement, Memorandum Agreement Decision MW-107, or the Vacation Agreement of December 17, 1941 and without basis in fact. It should, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood claims Carrier violated its Agreement with the Brotherhood when it assigned to Bridge Gang Carpenter H. M. Harrell, and had him perform, First Class Iron Worker's duties at North Little Rock, Arkansas, during the period from November 17 to 29, 1947, inclusive, but failed to pay him at the proper rate of pay for doing such work. It asks that Carrier be required to pay claimant for each day he performed those duties during this period the difference in rate of pay between that of a First Class Iron Worker, which was \$1.395 per hour, and that of a Bridge Carpenter, which was \$1.25 per hour. The latter is that rate at which Claimant was paid.

Rule 28 of the parties' Agreement effective July 1, 1938, provides:

"Composite Service: 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."

Claimant, a Second Class Carpenter, was assigned to System Bridge Gang No. 6. The rate of pay for a Second Class Carpenter was then \$1.25 an hour. During the period of the claim, November 17 to 29, 1947, both dates inclusive, this Gang was assigned to and worked constructing the steel frame of a Maintenance of Way Equipment Shop adjacent to the Back Shop of Carrier at North Little Rock, Arkansas. While so working claimant helped assemble and erect the steel framework of this Equipment Shop by helping assemble and bolt together various structural parts thereof.

During the period for which the claim is made, First Iron Worker, C. B. McKay, a member of System Bridge Gang No. 6, was absent from his duties with the Gang because he was on vacation. However, the record fails to show that claimant was assigned to fill the vacancy caused by McKay being absent.

In doing the work he did claimant performed duties of an Iron Worker. However, the Iron Worker's duties performed by claimant are those regularly assigned to and performed by Third Class Iron Workers. The regular rate of pay of a Third Class Iron Worker was then \$1.25 and hour, or the same as Second Class Carpenter. Consequently, although claimant would be entitled to the rate of pay for the Iron Worker duties he performed, the claim must be denied for he has already been paid at that rate.

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 Carrier has not violated the Agreement as contended.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 16th day of February, 1951.