

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE COLORADO AND SOUTHERN RAILWAY COMPANY

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

(1) That the Carrier violated the agreement when it required Machine Operator Dominic Langoni to suspend work for five hours daily on January 29, 30 and 31, 1951, and compensated him for only three hours on each of such respective days;

(2) That Machine Operator Dominic Langoni be allowed fifteen (15) hours' pay at his straight time rate because of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Mr. Dominic Langoni bid in and was assigned to the position of Machine Operator with headquarters at the Carrier's Ballast Pit at Folsom, New Mexico, and was regularly assigned to work eight (8) hours per day, five days per week.

The Carrier's Roadmaster, Mr. H. A. Harnish, instructed his supervisor, Mr. J. A. Connor to inform Machine Operator Langoni to work only three hours per day during the period January 29 to February 2, 1951, both dates inclusive.

Mr. Langoni complied with the instructions, but in accordance with the provisions of the effective agreement, providing for an eight-hour day, he entered eight hours on his time roll for each of the days in which he was required to suspend work.

Roadmaster Harnish changed the eight-hour entry on Mr. Langoni's time roll for the 29th, 30th and 31st days of January, 1951, to show three hours on each of the above mentioned dates, and Mr. Langoni was compensated on the basis of the altered time roll. The time rolls for February 1 and 2, 1951, were not changed and Mr. Langoni was paid on the basis of eight hours for each of those dates.

For some time prior to January 29th, 1951, Mr. Langoni was loading Company ballast to be shipped to Texas for unloading and application. The unloading operations in Texas were delayed, consequently, an accumulation of loaded ballast resulted on the Carrier's property.

Folsom is located in the Northeastern part of New Mexico and during the period in question, the Carrier continued normal operation of its trains,

construction companies also closed down work at their pits on January 29th for the three days in question and the three following days, as they too felt it was inadvisable to attempt to work the machines in such extreme cold weather.

Rule 21 (c) of the current Agreement between the Maintenance of Way Employees and the Colorado and Southern reads as follows:

"When less than eight (8) hours are worked for convenience of employes, they will be paid only actual time worked; when regularly assigned for service less than eight (8) hours on Sundays or holidays; they will be paid a minimum of three (3) hours; when due to inclement weather, interruptions occur to the regularly established work period preventing eight (8) hours of work only actual hours worked or held on duty will be paid for with a minimum of three (3) hours."

That part of Rule 21 (c) quoted above as underlined is applicable to this case.

Not only did the Roadmaster and Track Supervisor of the C&S feel that the temperatures were too cold to attempt to operate the machine as damage might occur to the machine, the two large construction companies also felt it inadvisable for them to work their machines and they, likewise, closed down due to this inclement weather. Therefore, as three different supervisory officers in charge of similar machines, loading the same type of material, all determined that the weather was too cold to work the machines in the loading of this material, it was not just the thought of the Roadmaster, as contended by the Employees.

With the extreme cold weather, as shown above, and in view of the Rule as quoted above, the Carrier contends that it did not violate the Agreement and, therefore the claim should be declined.

The Employees contend that Rule 12 (j) is applicable. This Rule reads as follows:

"Gangs will not be laid off for short periods (six (6) days or less) when proper reduction in expenses can be accomplished by first laying off the junior employes."

That Rule has no application in connection with this claim. That Rule pertains to the working of section gangs for less than six days per week for the purpose of reducing expenses, rather than laying off junior men of sections to accomplish the reduction in expenses.

Mr. Langoni was not laid off for the purpose of reducing expenses. The ballast pit was closed down due to inclement weather and, therefore, Rule 21 (c) only, applies.

We again request that this claim be declined.

OPINION OF BOARD: The System Committee claims Carrier violated its Agreement with the Brotherhood when, on January 29, 30 and 31, 1951, it permitted Machine Operator Dominic Langoni to work for only three hours on each of these days and paid him accordingly. Because thereof it asks that Langoni be paid for eight hours on each of these three days or for an additional fifteen hours at straight time.

Claimant was regularly assigned to the position of Clam shell Operator at Carrier's Twin Mountain Ballast Pit at Folsom, New Mexico. His work consisted of handling volcanic cinders, which was the material contained in the pit, by either loading it as ballast for shipment or casting aside the unsuitable material found therein. He was regularly assigned to work eight hours per day five days per week in accordance with Section 2 (a) General, of the parties' effective Agreement. This section provides:

"The Company will establish, effective September 1, 1949, for all employees covered by this agreement, subject to the exceptions contained in this agreement, a work week of 40 hours, consisting of five days of eight hours each, * * *."

Rule 21 (a) thereof provides:

"Except as provided in this rule, eight (8) hours, exclusive of the meal period, shall constitute a day."

(c) of Rule 21 specifically provides:

"* * * when, due to inclement weather, interruptions occur to the regularly established work period preventing eight (8) hours of work only actual hours worked or held on duty will be paid for with a minimum of three (3) hours.

Inclement weather, as therein used, means severe, harsh, rough or stormy weather which causes interruptions in work.

The record shows that at 8:00 A.M. on Monday, January 29, 1951, the temperature at Folsom was eight degrees below zero. Because of this cold weather, which the record indicates was extremely severe and unusual for this area, Roadmaster H. A. Harnish decided it would not be safe to work the clam shell, a very valuable piece of equipment. He notified Maintenance of Way Supervisor J. A. Connor of his decision and Connor in turn went to the pit that morning and notified Claimant of the Roadmaster's decision. Claimant was, however, told to idle the machine for two or three hours every morning in order to keep up the battery and protect the motor thereof. It is significant that when Connor arrived at the pit that morning Claimant had started the motor but was not using the machine for work, merely leaving the motor idle. Connor notified Claimant that as long as the weather remained extremely cold to just idle the motor every morning for two or three hours but to resume operations as soon as the weather moderated. The temperature remained below zero during all of January 29, 30 and 31, but moderated on February 1. As a result Claimant only worked about two or three hours on the three days idling the motor of his machine for the purpose of, as already stated, keeping up the battery and protecting motor. On February 1, the weather having moderated, he resumed full operations.

We find what Carrier did was reasonable under the extreme weather conditions then existing. It had a perfect right to protect its equipment and if there was danger of injuring it by operating it in this extremely cold weather it was not obligated to do so. If this resulted in Claimant not being able to work eight hours on each of these days it came within the exception quoted from Rule 21 (a) and the three hours that Carrier paid Claimant on each of these days was proper thereunder.

Having determined that the weather conditions existing at Folsom on January 29, 30 and 31, 1951, was within the quoted exception, we find Carrier did not violate the parties' effective Agreement.

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 Carrier did not violate the Agreement.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1953.