Award No. 6397
Docket No. MW-6164

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, 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 when it used section laborers holding seniority rights on section 291 to patrol track on the territory assigned to section 292, and failed to call J. L. Hannan who is a regularly assigned section laborer on Section 292.

(2) That Section Laborer J. L. Hannan, who was available but was not called to perform the work referred to in part (1) of this claim, be allowed two hours and forty minutes pay at his time and one-half rate of pay.

EMPLOYES' STATEMENT OF FACTS: Section No. 292, is under the jurisdiction of Section Foreman H. Taylor and Section No. 291 is under the jurisdiction of Section Foreman J. L. Moore. Both of the foremen and their crews are assigned to work Mondays through Fridays and have Saturdays and Sundays as their regularly assigned rest days.

Section Foreman H. Taylor's assigned vacation period for 1951, was scheduled to begin on June 18, 1951 and to continue for ten working days.

On account of heavy rains on the evening of June 15, 1951, and continuing past midnight to the early morning of June 16, 1951, it was determined necessary to patrol track to assure that it would be safe for passage of the Carrier's trains.

Section Foreman J. L. Moore called the two senior laborers assigned to his crew and one section laborer from Section No. 291 and patrolled both Sections 291 and 292.

Section Laborer J. L. Hannan Jr., is assigned to and holds seniority on section 292. He was available and willing to perform the overtime service, but was not called or notified, and a section laborer from Section 291 was utilized to patrol section No. 292.

The agreement in effect between the two parties to this dispute dated September 1, 1949 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

performed by Claimant J. L. Hannan, Jr. is not supported by any agreement rule. No agreement rule in support of that claim was cited by Petitioner in handling this claim on the property and none is cited in Statement of Claim. Nothing in support of Petitioner's contention that claimant lost two hours and forty minutes pay at time and one-half rate, or lost any specific amount of time, was presented to the Carrier and made a part of the particular question in dispute. Circular No. 1 of October 10, 1934, National Railroad Adjustment Board, provides all data in support of employes' position must affirmatively show the same to have been presented to the Carrier and made a part of the particular question in dispute. No such data having been presented to the Carrier and made a part of the particular question in dispute, the Petitioner is enjoined from presenting such data to the Board, and the Board is enjoined from considering such data in rendering an award in this case.

As there is no showing of any agreement violation or agreement rule to support the claim, the Board is requested to deny it.

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

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employes or their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant J. L. Hannan is a regularly assigned section laborer on Section 292 for the Carrier. It is alleged by the Organization that Carrier on June 16, 1951, failed to call Claimant for track patrol work, made necessary by heavy rains, but in his stead a laborer on Section 291 was used. This action by Carrier was alleged to be in violation of Article 3—SENIORITY—Rule 3, Article 3—SENIORITY—Rule 1, and Sub-section (f), Section 2, Article 10 covering Work on Unassigned Days, of the current Agreement between the parties. Claim is made for two hours and forty minutes at the one and one-half (1½) time rate of pay since the work involved was on a regularly assigned rest day.

Carrier contends the claim is without merit, that the Carrier did not violate the Agreement as alleged, and in fact denies specifically that a section laborer from Section 291 was used on Section 292 in place of the Claimant who was not used, since the crew used for the track patrol was not increased beyond the two section laborers on Section 292, as was customary under the circumstances.

The physical property of the Carrier involved in this dispute includes two section districts of Carrier described as Section 291 and 292. Section 291 comprises a southbound main track from MP 665.8 southbound to MP 648.5, Section 292 comprises the northbound track from MP 649.0 to MP 656.75 and then on the southbound track to MP 655.8 the starting point of Section 291. These two sections in part are approximately ¾ miles apart, running parallel with each other, and with the headquarters for each section at Colbert, about midway between the north and south terminus of the section districts.

Briefly the facts are, and we so hold, that Carrier required the service of the track patrol on the morning of June 16, 1951, to protect Carrier's property on Sections 291 and 292. There is no denial by the Organization that where track patrols are necessary, it has always been customary for the Carrier to use a foreman and two laborers to patrol the section. In the instance before us, Carrier used a foreman and two laborers both holding seniority in Section 292, and both laborers being senior to Claimant. It also is shown in the record that the foreman on Section 291 was on vacation and, in addition to the two laborers from 292, Section Foreman J. L. Moore, of Sec-

tion 292, called one laborer from Section 291, since Moore was also to be the foreman to patrol Section 291, the regular foreman being on vacation. Since the two sections run parallel to each other, the foreman was to patrol both sections, and the men used only did patrol work on their own assigned section, although the one section laborer from 291 did ride with the patrol over Section 292, and it is also shown the two section laborers from 292 rode over Section 291. But there is no showing in the record that the employes did any patrol work on the section other than their own. If the patrol work required had applied only to Section 292, the Claimant's regularly assigned section, he could not have been called for work, for the reason two laborers, both his senior, were used. Therefore, we are of the opinion Claimant has not shown he was deprived of any work, since the employe from Section 291 performed no patrol work on Section 292 to the detriment of Claimant, and the mere fact the employes rode over both sections was of necessity occasioned by the fact the foreman of Section 292 was on vacation and was not available, so that it became necessary for the Section Foreman on 292 to supervise the patrol work on both sections. Certainly this was not improper action by the Carrier, and no violation of the Agreement. Claim should be denied in this instance, but if a showing had been made that the employe from Section 291 had performed any patrol duty on Section 292, then the Claimant would have been entitled to a sustaining Award.

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

Claim as alleged does not merit a sustaining Award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1953.