

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) The Carrier violated the Agreement when it required Section Laborers James Washington and Richard Sallie to suspend work during regularly assigned hours on January 25 and 26, 1954 respectively and to work during overtime hours at pro-rata rates of pay;

(2) James Washington and Richard Sallie each be allowed eight hours' pay account of being required to suspend work during their regularly assigned hours on January 25 and 26, 1954, respectively;

(3) James Washington and Richard Sallie each be allowed the difference between what they were paid at straight-time rates and what they should have been paid at overtime rates for the services each performed for eight (8) hours during hours outside of their regularly assigned work period.

EMPLOYEES' STATEMENT OF FACTS: Prior to January 25, 1954, James Washington and Richard Sallie were working as Section Laborers, Section No. 337, South Dallas, Texas, with hours of assignment from 8:00 A. M., to 5:00 P. M., with one (1) hour for meal period.

On January 25, 1954, Section Laborer James Washington's assignment was changed to 4:00 P. M., until 12:01 A. M., January 26, 1954, for a period of eight (8) hours only.

On January 26, 1954, Section Laborer Richard Sallie's assignment was changed to 12:01 A. M., until 8:00 A. M., for a period of eight (8) hours only.

In making the above changes in the hours of assignment for each of these two Section Laborers, such Section Laborers were required to perform service not comprehended within the assignment of the regular section force No. 337, thereby rendering service during overtime hours, for which they were only compensated at their respective straight time rate. Likewise, in changing the hours of assignment for these two employees, they were deprived of working their regular tour of duty, i.e., January 25, 1954 for Section Laborer James Washington and January 26, 1954 for Section Laborer Richard Sallie.

James Washington did not work any overtime on January 25, 1954.

James Washington did not suspend work to absorb overtime on January 25, 1954.

Richard Sallie did not suspend work during hours of his assignment January 26, 1954.

Richard Sallie did not work any overtime on January 26, 1954.

Richard Sallie did not suspend work to absorb overtime January 26, 1954.

James Washington has been allowed eight hours pay for working the eight regularly assigned hours of his assignment January 25, 1954; and Richard Sallie has been allowed eight hours pay for working the eight regularly assigned hours of his assignment January 26, 1954. James Washington having been fully paid for hours of his regular assignment January 25, 1954, and Richard Sallie having been fully paid for hours of his assignment January 26, 1954; no sum would be due either employee under part (2) of the claim.

Inasmuch as James Washington performed no service outside of the assigned hours of his regular assignment January 25, 1954, and Richard Sallie performed no service outside of the assigned hours of his regular assignment January 26, 1954, no overtime has been earned by either party and no sum is due either claimant under part (3) of the claim.

All data submitted in support of Carrier's position have been heretofore submitted to the employees or their duly authorized representatives.

The carrier requests ample time and opportunity to reply to any and all allegations contained in the Brotherhood of Maintenance of Way Employees' System Committee's and Employees' submission and all pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company of Texas expressly denies each and every, all and singular the allegations of the Brotherhood of Maintenance of Way Employees, System Committee of the Brotherhood, and Employees.

For each and all of the foregoing reasons, the Railroad Company respectfully requests the Third Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Company such other relief to which it may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves a claim on behalf of two named claimants who were employed as section laborers on the Carrier's property in South Dallas, Texas. They were regularly assigned to work in such capacity from 8:00 A. M. to 5:00 P. M., with one hour for lunch.

There is no material dispute in the record with regard to the facts of the occurrences which gave rise to the instant claims. On January 25, 1954 Claimant Washington was required to change his shift to 4:00 P. M. to 12:00 Midnight, and on January 26, 1954 Claimant Sallie was required to work 12:01 A. M. to 8:00 A. M. instead of his regularly assigned shift from 8:00 A. M. to 5:00 P. M.

The Petitioner contends that in directing these changes in working hours the Carrier violated the terms of Article 7, Rule 7, and Article 9, Rule 3 of the effective Agreement.

The respondent Carrier contends that it acted in accordance with the provisions of Article 7, Rule 7 when it made the changes about which com-

plaint is made in this case. It points out that it gave the necessary notice for making the change, which thereupon gave the supervisory officer the right to change starting times. The Carrier denies emphatically that there was any suspension of these claimants from their regular hours of work to absorb overtime.

Article 7, Rule 7, provides as follows:

"The starting time of the work performed for regular assigned service shall be designated by the supervisory officer and shall not be changed without first giving the employees affected twenty-four (24) hours' notice. Employees working single shifts, regularly assigned exclusively to day service, will start work period between 6:00 A. M. and 9:00 A. M. Employees working single shifts, regularly assigned to part-day and part-night service, will start work between 3:00 P. M. and 6:00 P. M. Employees working single shifts, regularly assigned to exclusively night service, will start work period between 6:00 P. M. and 10:00 P. M. For regular operations necessitating working period varying from those fixed for the general force, the hours of work will be assigned in accordance with the requirements."

The record shows in the instant situation that more than twenty-four hours notice of change in starting time was given Claimants. However, the making of the traffic density check, the work involved in the instant dispute, was not regular assigned service as that herein is contemplated in the first part of the cited rule. Furthermore, it is clear that, even if otherwise permitted, there was no intention here of changing the regular starting time of claimants. Hence it was a purely temporary assignment to what was in effect the hours of another shift.

Article 9, Rule 3, also cited by the Petitioner, reads as follows:

"Employees will not be required to suspend work during any regular assigned work period for the purpose of absorbing overtime."

We cannot say that the Carrier made the change in question as a deliberate and calculated violation of Article 9, Rule 3, but the result had the effect of violating the rule.

Carrier relies upon Awards 2826 and 7053 of this Division. We believe both of these are clearly distinguishable from the instant case. We are of the view that the principles set out in Awards 3055, 3156, 3784, 4109, 4151, 4744, 5423 and 5440 are more appropriate to this case, and justify a sustaining Award.

Since two violations are found here, the question arises regarding the payment which the Carrier shall make. On the authority of Awards 4109, 5423 and 5440 we believe payment should be the pro rata rate for Claimants' regular shifts from which they were suspended on the dates in question, except that Claimant Washington's payment shall be pro rata for seven hours since he did work one hour which would have normally been work in the time span of his regular assignment.

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 the Agreement was violated.

AWARD

Claims (1) and (2) sustained as per Opinion. Claim (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1957.