

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, BURLINGTON AND QUINCY
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it failed to call and use Water Service Repairman E. A. Pfaff to perform overtime work necessary and incidental to the repair and maintenance of water facilities on October 23, 24, 30 and 31, 1954, but, in lieu thereof had the overtime work performed by an assistant Master Carpenter and a Master Carpenter.

(2) Water Service Repairman E. A. Pfaff be paid the minimum pay allowance stipulated in Rules 38 to 40 for each of dates referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: During the latter part of October, 1954, water service employes, including the claimant, were engaged in repairing a leak which had developed in the Carrier's underground water service lines in the driveway just south of the Naperville depot.

One of the duties directly necessary and incidental to the aforesaid repair and/or maintenance of that water line was the erection and maintenance of a barricade around the open trench and the daily filling, lighting and placing of flares on that barricade each afternoon before leaving the work location to provide day and night protection against the open trench.

On Monday through Friday, regular work days of the water service employes, the work of filling, lighting and placing flares on the barricade was assigned to and performed by the claimant employe.

However, on two Saturdays, October 23 and 30, 1954 and on two Sundays, October 24 and 31, 1954, regularly designated rest days of the water service employes, the work of filling, lighting and placing flares on the barricade was performed by the Master Carpenter or the Assistant Master Carpenters, who are employed as Carrier officials and who are excepted from the scope of the Agreement between the parties hereto.

"The General Yardmaster being on duty for the sole purpose of protecting the Carrier's interests at a time when no other employes were working, performed a service incidental to his position which did not amount to a violation of the Clerks' Agreement."

In this case the master carpenter, while protecting Carrier's interests, performed a service incidental to his position which cannot be considered a violation of Maintenance of Way Employees' Agreement.

In summary, it must be remembered that:

1. The sole purpose of the flare was to warn and protect Carrier's patrons—its purpose was not to protect the water facilities.
2. No repairs of any kind were made by the master carpenter, and in fact he did not touch any part of the water facilities.
3. The service he performed was incidental to his position.

With these clear facts before it, the Board must deny the claim in its entirety.

* * *

The Carrier affirmatively states that all of the data herein and herewith submitted has been previously submitted to the Employees.

* * *

(Exhibits not reproduced.)

OPINION OF BOARD: Because the record in this case contains so many disputed statements, claims and counter claims it is impossible to decide the claim on its merits. Accordingly, a dismissal Award will be made.

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 claim should be dismissed in accordance with the Opinion.

AWARD

Claim dismissed in accordance with Opinion and Findings

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 13th day of June, 1958.