

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE PORT TERMINAL RAILROAD ASSOCIATION**

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

(1) The Carrier violated the effective Agreement when they failed to call Truck Driver Nicholas Cortez for service on Saturday, October 23, 1954, and in lieu thereof, assigned truck-driving work to Welder W. S. Williams, who holds no seniority rights in the class of truck drivers;

(2) Truck Driver Nicholas Cortez now be paid at his respective time and one-half rate for six (6) hours and thirty (30) minutes account of the violation referred to in part one (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant Nicholas Cortez is a regularly assigned maintenance of way truck driver for the Carrier. He is regularly assigned to a work-week of Monday through Friday; Saturdays and Sundays being his regularly designated rest days. He has a seniority dating in such a class as of May 14, 1948.

Welder W. S. Williams has a seniority dating as welder as of July 22, 1949, and is regularly assigned to a work-week which includes Saturday as a day of his regular assignment.

On Saturday, October 23, 1954, Welder W. S. Williams was assigned to operate the truck which is operated by Claimant Nicholas Cortez during his regular assigned work-week of Mondays through Fridays, in hauling and distributing shell from a gondola car to a private road running from Clinton Drive to the Carrier's roundhouse. In the hauling and distributing of this shell by the Carrier truck, Welder Williams consumed six (6) hours and thirty (30) minutes time.

Claimant Nicholas Cortez has a private telephone; was at home and available to have performed this work of the position on Saturday, October 23, 1954, but the Carrier made no effort to call him. Therefore, claim was filed in behalf of Nicholas Cortez for six (6) hours and thirty (30) minutes at the truck driver's overtime rate of pay. The Carrier has declined the claim.

to Cortez or any other employe. Further, the driving of the truck by Welder Williams was a part of his assignment and in connection with the work which he performed that date which was a regular work day of his regular work week. The driving of motor vehicles of the Association has been handled in the manner described above for many years without claim or protest from Employes of any department, therefore, the Maintenance of Way Employes must have concurred in this practice or claims would have been filed prior to this October 23, 1954.

The Carrier respectfully requests that the claim be denied.

OPINION OF BOARD: The record discloses that the Association has a number of trucks, none of which are assigned to any particular department; that Claimant is a truck driver assigned to the Maintenance of Way Department and used the truck in connection with the Maintenance of Way work; and W. S. Williams is employed in the Welding Department and used the truck in connection with his welding work.

Saturday, October 23, 1954, was a Rest Day of the Claimant; therefore that day became an "unassigned day", under Rule 11. Welder Williams was regularly assigned to duty on October 23, 1954 and was used to haul and distribute shell from a gondola car on to a private road running from the Clinton Drive to the Association's round house. This is work properly assignable to Maintenance of Way employes. Consequently, the Association violated the Agreement in assigning this work to Welder Williams.

Claim will be sustained at the pro rata 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 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

That the Agreement has been violated as stated in the Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 23rd day of June, 1960.