

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to allow Section Laborer H. Lewis pay at the Telephone Maintainer's overtime rate for the overtime services assigned to and performed by the claimant in performing Telephone Maintainer's service from 7:00 P. M. on March 8, to 3:00 A. M. on March 9, 1957.

(2) Section Laborer H. Lewis now be allowed the difference between what he was paid at the section laborer's overtime rate and what he should have received at the Telephone Maintainer's overtime rate for the eight hours' work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, H. Lewis, holds seniority as section laborer and is employed on the section gang at Millen, Georgia.

On March 8, 1957, after the Claimant had completed his regular tour of duty he was instructed to perform overtime services working with Telephone Maintainer Rabitsch in the performance of his duties, between the hours of 7:00 P. M., March 8, and 3:00 A. M., March 9, 1957.

The overtime service performed by the claimant in working with the Telephone Maintainer was caused by "a tree on the telephone line at M.P. 146" and such service was to "cut this tree from the wire lines."

The Claimant was paid at the overtime rate applicable to the position of section laborer.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

OPINION OF BOARD: Claimant H. Lewis, holds seniority as section laborer and is employed on the section gang at Millen, Georgia. On March 8, 1957 he was instructed to perform overtime services working with Telephone Maintainer Rabitsch between the hours of 7:00 P. M., March 8, and 3:00 A. M., March 9, 1957.

A reproduction of a signed statement by Claimant regarding duties performed under date of this dispute is as follows:

“Millen, Ga., June 14, 1957

“To Whom It May Concern:

“On March 8th I was called by Telephone Maintainer C. L. Rabitsch at 7:00 P.M. to assist him. We proceeded to the 146 M.P. where there was a tree on the telephone line. My work consisted of cutting this tree from the wire lines.

“/s/ **Howard Lewis**
Howard Lewis.”

POSITION OF EMPLOYES

That work performed by Claimant while working with Telephone Maintainer, who works in the Telephone and Telegraph Department is excepted from the provisions of the Maintenance of Way Agreement as provided under Rule 1 of the existing Agreement.

“Scope

“Rule 1. These rules govern the hours of service, working conditions and rates of pay of employees in the Maintenance of Way and Structures Department, except:

- “(a) Signal Department
- (b) Scale Department
- (c) Engineering
- (d) Clerical
- (e) Telephone and Telegraph Department
- (f) Supervisory forces above the rank of foreman.”

That Claimant holds seniority in the Track sub-department as provided for in Rule 2. Seniority Sub-Departments.

“Seniority Sub-Departments

“Rule 2. Seniority rights of all employees will be confined to the sub-departments which employed, except as provided in rules 3(c), 31 (b) and 33 (a-2). Sub-departments are defined as follows:

- “(a) Track
- (b) Bridge and Building
- (c) Plumbing
- (d) Rail Welding
- (e) Water Supply

- (f) Coal Chutes and Locomotive Fuel
Oil Station Employees
- (g) Tanners
- (h-1) Roadway Machines
- (h-2) Crawler-mounted Shovels, Draglines,
Bulldozers, Tournapulls and Steam Ditchers
- (i) Iron Bridge
- (j) Camp Car Cooks
- (k) Paint Gang — Savannah Division
- (l) Crossing Watchmen

That Carrier instructed and required Claimant to perform services of a nature that comes within scope of another Agreement and failed to pay Claimant in accordance with provisions of Rule 19 of the Maintenance of Way Agreement.

"Preservation of Rates

"Rule 19. Employees temporarily or permanently assigned to higher rated positions shall receive the higher rate while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced."

POSITION OF THE CARRIER

That this is an entirely new position of the Employees and is designed to change the mutual past interpretation of more than 50 years duration on this property.

That the existing Agreement does not give the Employees any contract right to a higher rate of pay under some other schedule Agreement.

That the work of cutting down trees along the right of way of this Carrier is not spelled out in any Agreement and that such work has been performed both in emergency situations and non-emergency situations by Employees covered by the Communication Workers' Agreement with the International Brotherhood of Electrical Workers, by the Employees covered by the Agreement with the Brotherhood of Maintenance of Way Employees by Employees covered by the Agreement with the Brotherhood of Railroad Signalmen of America and possibly others depending upon who is most available.

OPINION

The facts in this case are not disputed by the parties and the cutting down of a tree along the right of way of the Carrier is not the exclusive work of any craft or class of Employees. The Claimant in this case did perform work to remove a hazard to the Carrier's Communications lines and this Board has held in Award 4077 which in part states as follows:

" . . . Whether certain types of work belong to Bridge and Building employees or some other craft, is dependent upon the purpose sought to be accomplished by it. If its purpose is to maintain a bridge by removing a hazard to its safe use, it is Bridge and Building work. If its purpose is to protect track and other facilities maintained by section employees, the work would belong to them.

Under the evidence produced in this record, we think the purpose of the work was the maintenance and safety of the bridges. This makes it Bridge and Building work. This being true, claimants are entitled to pay under Bridge and Building rates as provided by Rule 32, current Agreement."

This Board has similarly ruled in Awards 1544, 2513, 2169 and in many others.

The Organizations makes claim in this case for overtime work at over-time rate for the Claimant at the rate of pay that a Telephone Maintainer would have received but does not present any evidence that the work of cutting down a tree is normally performed by a Telephone Maintainer. The Carrier contends that work performed by Claimant Section Laborer Lewis is more like that of the Groundman under the I. B. E. W. Agreement.

Since the burden of proof normally rests upon the Petitioner, we find for the Claimant to the extent of time and a half at rate received by Groundman under the I. B. E. W. Agreement less the amount already compensated as section laborer for work performed in this dispute as provided in Rule 19 of the current 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 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

Claim sustained to the extent specified in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of October 1962.