

Award No. 10932

Docket No. MS-11361

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

THE BROTHERHOOD OF RAILROAD TRAINMEN

THE SPRINGFIELD TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: This is a protest and time claim in favor of maintenance man John Parkhurst for one day's pay March 6, 13, 20, April 24, May 1, 15, 22, 29, 1958 and all subsequent dates. And protest and time claim for one day each, in favor of trackman Burleigh Drown June 5, 1958 and all subsequent dates, when Track Supervisor Cross and Master Mechanic Patch performed other than supervisory duties while claimant's assignments were not working.

EMPLOYES' STATEMENT OF FACTS: Master Mechanic Patch and Track Supervisor Cross are supervisory employes in the employ of the Springfield Terminal Railway of Vermont and are compensated on a salary basis in contrast to hourly paid employes represented by the Brotherhood.

On claim dates, Master Mechanic Patch and Track Supervisor Cross performed such work as welding rails, welding hangers, setting up hack saw, putting in new window sill in the Barn, worked pick and shovel, made repairs on diesel, cut and drilled pipe, painted the Toll Bridge, and handled maintenance truck transporting compressor.

The services outlined above were performed when hourly paid employes under their supervision were not on duty, being either on rest day or cancelled account short work week.

Carrier does not deny that these services were performed. Instead it contends that such services were permissible under the agreement, or are not subject to the agreement.

These claims, and the subject matter, have been handled both in writing and in conference with the carrier in accordance with the provisions of the Railway Labor Act.

March 6, 1958 which was a day when hourly paid maintenance man's assignment was cancelled, Master Mechanic Patch put in new window sills in car barn and worked on toll counting device on toll bridge. While on March 5, 1958 Track Supervisor Cross used the maintenance truck to transport an air compressor to a garage to be repaired, and

4. Mr. Drown's claim on June 5, 1958, is for pay for work which he has never performed nor is qualified to perform.

5. Claims for subsequent dates should be denied as vague and indefinite.

All data and arguments contained herein have been presented to the employes in conference and/or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier contends herein—without refutation—that claims presented in behalf of Claimant Parkhurst, with the exception of the dates of May 22 and 29, 1958, were not filed within the 30 days provided for in Rule 12 of the applicable agreement of the parties, which rule, in pertinent part, provides:

“Rule 12. * * * A time claim must be filed within thirty (30) days of the date of the occurrence giving rise to the claim * * *”

Consequently, we find that claims made for the dates indicated are barred and should be dismissed.

In regard to the Parkhurst claims of May 22 and 29, it appears to our satisfaction that the complained of work was not performed for the Carrier. The record shows that this work was done for the Cheshire Bridge Corporation. This corporation (a distinct legal entity—with which the Employes have no agreement) paid for the disputed work. It follows that this portion of the Claim should be denied.

As to Claimant Drown, it is uncontroverted of record that he was not qualified to perform the welding work done on June 5, 1958 and subsequent dates. Therefore, his claims herein must be denied.

Since this Claim has been decided on the basis of the reasons set forth above, it is not necessary that this Award be addressed to other issues raised by the parties or in their behalf.

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 was not violated.

AWARD

Claim dismissed in part and denied in part — as above shown and indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1962.