

Award No. 11080
Docket No. MW-9729

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(1) The Carrier violated the effective Agreement when it used an Assistant Foreman who was regularly assigned to the section territory identified as Tower A to perform overtime service on the section territory identified as Tower B from 4:30 P. M. on March 20, 1956 to 8:00 A. M. on March 21, 1956 and failed to call and use Mr. Anthony Riccardi who was the regularly assigned Assistant Foreman on the Tower B Section.

(2) Assistant Foreman Anthony Riccardi be allowed the exact amount lost because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. Anthony Riccardi was regularly assigned to the position of Assistant Foreman on the section territory identified as Tower B, with headquarters at Jersey City, under the supervision of Section Foreman Oscar Johnson. This section gang's regularly assigned hours were from 8:00 A. M. to 4:30 P. M. with thirty minutes out for lunch.

At the close of the work period on Tuesday, March 20, 1956, Assistant Foreman Riccardi inquired of Foreman Johnson whether or not it was necessary for him to remain on duty to keep the facilities at Tower B in operation because of snow conditions prevailing at that location. In turn, Foreman Johnson telephoned the office of his superiors and was advised that since it had ceased snowing, it would not be necessary for any member of his gang to remain at Tower B during overtime hours. Foreman Johnson then released the Claimant Assistant Foreman, who returned to and remained at his residence, available for a call if needed.

At 4:30 P. M. on the afore-mentioned date, Assistant Engineer Leahy instructed Assistant Foreman Chiusano, who was regularly assigned as such on the section territory identified as Tower A, to proceed to Tower B and inspect and see that the facilities at that location did not become inoperative because of the freezing weather conditions. Mr. Chiusano returned to the Tower A section at 8:00 A. M. on Wednesday, March 21, 1956.

"that the word 'service' * * * was intended at most to refer to the performance of labor primarily for the benefit of the Carrier. To give the word its bare, literal meaning not so connected would lead to absurdity". As previously mentioned, Assistant Foreman Chiusano performed no manual labor but, in the interest of insuring the safe and continued operation of movements entering and leaving the Carrier's Jersey City, N.J. terminal via the interlockers at Towers "A" and "B", was instructed to check the facilities at Tower "B". The Carrier did not violate any provisions of the Agreement by exercising its discretion to determine the number of men to remain on duty in order to maintain the plant in the event the electrically operated switches in any way failed during the commuter rush hour or thereafter during the night.

Inasmuch as the evidence of record clearly and definitely shows that the Employees have not established any violation of the controlling agreement or basis for the claim as alleged in their Statement of Claim, your Honorable Board is requested to deny same in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned to the position of Assistant Foreman on the section territory identified as Tower B, Jersey City, New Jersey. At 4:30 P. M. on March 20, 1956 (the end of his work period) he inquired whether it would be necessary for him to remain on duty to keep the facilities at Tower B in operation because of snow conditions prevailing in the area. He was advised that since the snow had ceased he would not be needed for overtime duty at Tower B. Sometime later, Foreman Kelleman of Tower A, who had been instructed by his superior to keep a close check on the facilities at Tower B, sent his Assistant Foreman, Chiusano, to Tower B to make the necessary check of the facilities to be sure the equipment was operating properly. There is a dispute concerning the exact instructions given to Chiusano as to the duties he was to perform at Tower B. The parties are in agreement, however, that some inspection of the facilities was required, that Chiusano was instructed to make such inspection and that he did so. The question to be determined is whether the assignment of this duty to Chiusano violated Claimant's contractual rights.

Claimant held the position of Assistant Foreman at Tower B by virtue of bid and seniority. He was entitled to any work on Tower B of the kind he usually performed, in preference to Chiusano, who held a similar position on Tower A. Carrier does not seriously question this proposition. Rather it bases its defense on a denial that Chiusano performed any work in Claimant's territory (Tower B). Its position is that Chiusano did no "physical work" but merely inspected the facilities to determine whether the plant was operating properly. In other words that "inspecting" is not work.

We think Carrier's position is untenable. In our opinion, the duties performed by Chiusano at Tower B, while not manual labor, were of the type and character normally performed by Claimant Assistant Foreman during his regularly assigned hours. The seniority provisions of the agreement protect all work that belongs to a position even though it involves supervision and inspection as distinguished from so called physical tasks. The record shows that the need for this continuing inspection was known at the time Claimant was released from duty and that no new emergency condition was created warranting the assignment

of the work to someone other than Claimant who was available. We conclude, therefore, that Carrier violated the agreement in assigning the work to Chiusano.

The remaining question is the compensation due Claimant for the work improperly assigned. There is a dispute as to the length of time Chiusano spent at Tower B. Carrier contends that Chiusano went to Tower B about 10:30 P. M., on March 20th and returned to Tower A about 3:30 A. M. March 21st. Petitioner says he was sent there at 4:30 P. M. on March 20th and returned to Tower A at 8:00 A. M. on March 21st, thus making a total of 15½ hours of overtime which Claimant lost. Petitioner's position is based mainly on a letter of April 12, 1957 from Chiusano to the General Chairman setting forth his instructions from the Foreman, what work he performed at Tower B and the length of time he was there. Carrier insists that the Board should not consider this letter since it was not called to the attention of Carrier during the processing of the claim on the property. We agree with Carrier in this respect. It should be noted, however, that Carrier is not entirely consistent here. In its statement at the oral hearing it relied upon this letter in support of one of its propositions. Furthermore, Carrier, in its submission relies upon a letter from Foreman Kelleman, dated June 13, 1957 (two months after the Chiusano letter, and a month after the General Chairman had given notice of submission of the claim to this Board). It obviously was not shown to Petitioner on the property.

This Board has no method of determining the exact number of hours Chiusano worked on Tower B, but by Carrier's own admission the total was about five (5) hours. We hold, therefore, that Claimant is entitled to be compensated for five hours of work at the rate he would have received had he performed the duties which in this case is the overtime rate of time and one-half.

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 indicated in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1963.