

Award No. 12089
Docket No. MW-11455

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when, on November 15, 1958, it used a section laborer junior to section laborer Albert Gibson to perform overtime service from 6:30 A. M. to 1:00 P. M.

(2) Section Laborer Albert Gibson now be allowed and paid the exact amount of monetary loss suffered account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. Albert Gibson holds seniority as a section laborer which dates from **April 2, 1943**, and he is **regularly assigned** to the section headquartered at Alto Pass, Illinois.

Mr. V. F. Gerberding holds seniority as a section laborer which dates from **May 1, 1948**, and, because of his assignment to and service as a relief section foreman, he is used as an **extra** section laborer on the section at Alto Pass, Illinois.

The section crew at Alto Pass, Illinois, is regularly assigned to a work week of Monday through Friday (Saturdays and Sundays are rest days). For the work week which began at the beginning of work on November 10, 1958, and which ended at the close of work on November 14, 1958, each of the aforementioned employes had at least forty (40) hours of work. Each of the aforementioned employes worked with the Alto Pass section crew on Friday, November 14, 1958.

At the close of work on Friday, November 14, 1958, the section foreman notified and instructed four section laborers to report for overtime service at 6:30 A. M. on Saturday, November 15, 1958. Among the four who were

I will be glad to discuss this with you at our next conference.

Yours very truly,

/s/ M. C. PLUNK
M. C. Plunk, General Chairman

MCP:rm
cc — Mr. J. V. Johnston
Mr. A. L. King ”

The above quoted letter refers to the payment to section laborers promoted to relief section foremen a differential of .08 cents per hour while working as an extra section laborer on his home section and not engaged in relief foreman work. The January 7, 1955 letter agreement added a further proviso that such relief foremen (paid the per hour differential) **MAY NOT BE DISPLACED BY OTHER SECTION LABORERS**. In other words, Gerberding was working as extra section laborer on his home section and under the agreement he “may not be displaced by Gibson”.

The difference between the parties involved herein, as the Carrier understands it, is that the Brotherhood endeavors to make a distinction between the use of Gerberding on a straight time basis and his working on November 15, 1958 (Saturday), on an overtime basis. The agreement makes no distinction between the use of a relief section foreman on an overtime basis or on a straight time basis. As the Carrier understands the Brotherhood's position, it is that Gerberding would properly be used in preference to Gibson on Monday through Friday, but on Saturday Gibson would be used in preference to Gerberding because on Saturday, overtime was involved. The Carrier maintains that the agreement makes no distinction between the use of a relief section foreman when he is paid on a straight time basis or on an overtime basis. Had the parties intended a different application of the agreement on Saturdays as compared with Fridays, certainly such a distinction would have been and could have been easily spelled out in the agreement. On the contrary, the agreement makes no distinction between a relief foreman working on Friday and working on Saturday.

This Board should not enlarge the agreement to provide such a distinction as set out above. The claim is totally without merit and should be denied.

OPINION OF BOARD: This docket raises the following question:

Was it a violation of 7 (k) of the effective agreement as modified by the agreement bearing date January 7, 1955 for Carrier to work overtime an extra section laborer who was also a relief section foreman who was being paid the per hour differential while a regularly assigned section laborer not on furlough with more seniority was available?

We hold that it was.

At the close of work on Friday the section foreman for the Alto Pass, Illinois crew instructed an extra section laborer with seniority from 1948 to report for overtime work on Saturday, normally a rest day. This laborer also served as a relief section foreman when the occasion arose.

The Claimant here, with seniority as a section laborer from 1943 and regularly assigned to this section crew was not called for this overtime work on what would otherwise be his rest day although both he and the extra section laborer had that week worked at least forty hours. This action was claimed to be a violation of the agreement, specifically section 7 (k) which provides:

“(k) — Work on Unassigned Days

“Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; **in all other cases by the regular employe.**” (Emphasis supplied)

The Carrier asserted that by reason of the extra laborers status as a relief section foreman (being paid the differential) the agreement of January 7, 1955 with examples permitted the action taken. This provides:

“Relief section foremen who are paid the per hour differential, as provided for in the agreements, while working on his home section and required to perform the usual duties of a relief section foreman, will be permitted to perform work as an extra section laborer on his home section while not engaged in relief section foreman’s work and may not be displaced by other section laborers.”

“EXAMPLES

	Section Labor Seniority	Relief Foreman Seniority	
(1) Harry Jones	1-02-44		
(2) John Brown	1-02-45	1-02-47	Paid differential as provided in agreement.
(3) Bill Smith	1-02-46	1-03-49	Not paid differential.
(4) Jim White	1-04-47		

Example 1 — Relief Foreman, John Brown, can work as Extra Section Laborer while Harry Jones is furloughed.

Example 2 — Relief Foreman, Bill Smith, cannot work as Extra Section Laborer when Harry Jones is furloughed account not being paid the differential.

Example 3 — Relief Foreman, Bill Smith can work as Section Laborer with Jim White furloughed as he has more Section Laborer’s seniority.”

This table was included to show specific examples of the meaning and intent of the agreement.

With the Carrier's position we cannot agree.

A careful examination of the examples reveals that each refers to the situation where the more senior employe is on furlough which is not the case here. The Claimant was not on furlough but actually working. The agreement of January 7, 1955 not applying to this particular situation the mandatory language underlined above of 7 (k) controls.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1964.