

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SOUTHERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it failed to call and use Bulldozer Operator C. C. Widner to perform the duties of his position during overtime hours on May 14, 1957.

(2) Bulldozer Operator C. C. Widner be allowed six (6) hours' pay at his time and one half rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Mr. C. C. Widner, was regularly assigned to the position of Bulldozer Operator on the first shift, 7:00 A. M. to 3:00 P. M., while Track Foreman Bill Raper was the regularly assigned Track Foreman on the second shift (3:30 P. M. to 12:00 Midnight) at the Carrier's Inman Yards.

On May 14, 1957 Track Foreman Raper was assigned to and performed the duties of the claimant's position in the operation of the bulldozer for six hours during the second shift.

Track Foremen and Bulldozer Operators hold seniority in separate and distinct sub-departments and are carried on separate seniority rosters.

The claimant was available, ready and willing to perform the duties of his position during the overtime hours here involved, but was not notified or called to do so.

The Agreement violation was protested and the instant claim filed in behalf of the claimant.

The claim was handled in the usual manner on the property and was declined at all stages of the appeals procedure.

Composite Service Rule 48 provides that an employe working on more than one class of work on any day will be allowed the rate applicable to the character of work preponderating for the day. Here, Mr. Bill Raper, foreman, assigned 3:30 P. M. to 12:00 midnight, worked on more than one class of work during his regular tour of duty. He worked as foreman, performing supervisory duties, and, in addition, operated a tractor. Rule 48 is clearly applicable, and, as the foreman's rate is higher than that of a tractor operator, he was paid the higher rate for all service performed. He was a qualified tractor operator.

Mr. C. C. Widner was regularly assigned as tractor operator 7:00 A. M. to 3:00 P. M., and on May 14, 1957 filled his regular assignment. No provision contained within the four corners of the agreement in evidence gave him any contract right to be called and utilized to operate the tractor after 3:00 P. M. He therefore had no valid claim to the pay here demanded.

Under the composite service rule, by utilizing Bill Raper to operate the tractor, the work was performed at the straight time rate, although under the rule the higher rate, i.e., the foreman's rate, was paid. Prosecution by the Brotherhood of the claim constitutes a demand that the work be performed at the punitive rate of pay, and therefore constitutes nothing more than an effort by the Brotherhood to exact money from the company for no justifiable reason whatsoever.

Rule 49 of the Agreement definitely negatives the claim, because the demand here made on behalf of Mr. Wildner demands compensation for work not performed by him. This rule was designed specifically to prevent claims such as this.

No overtime was worked by Mr. Widner (or by Wildner) nor was any required to be worked. Mr. Widner filled his regular assignment, for which he was amply paid. He was assigned to the first shift, and therefore had no contract right to any work on the second shift; nor did he (nor C. C. Wildner) have any contract right to be paid for the sum here demanded.

Claim being without any basis and unsupported by the agreement, the Board cannot do other than make a denial award.

All evidence here submitted in support of the Carrier's position is known to employe representatives.

OPINION OF BOARD: Claimant was regularly assigned Bulldozer Operator on the first shift 7:00 A. M. to 3:00 P. M. On May 14, 1957, the services of a bulldozer operator were required on the second shift, which work was performed by the track foreman regularly assigned to the second shift, and this claim is made for the time so worked, six hours, at time and one-half. The track foreman had seniority as a bulldozer operator, but also had separate seniority as a track foreman which was exercised to obtain his position on the second shift.

The Claimant was the holder of the position of Bulldozer Operator in the Maintenance of Way, Machines—Track Sub-department, a position he held because of seniority. This was a separate sub-department, with a separate seniority roster. In the instant case, the Track Foreman also held seniority, superior to Claimant in the same sub-department, as the Claimant, but at the time, he was not exercising the same seniority as the Claimant, but was assigned to his position as track-foreman because of other seniority, and he did

not relinquish this assignment. He was thus placed in the position of performing the work of two assignments, with separate seniority.

It is argued that the "Composite Service—Rule 48" reads as follows:

"An employe working on more than one class of work on any day will be allowed the rate applicable to the character of work preponderating for the day, except that when temporarily assigned by the proper officer to lower rated position, when such assignment is not brought about by a reduction of force or request or fault of such employe, the rate of pay will not be reduced. This rule not to permit using regularly assigned employes of a lower rate of pay for less than half of a work day period to avoid payment of higher rates."

has application. The composite service rule is concerned primarily with the pay for work performed. It does not govern seniority, or the right to work. Here the bulldozer operation was a separate operation, with separate seniority. The primary issue, was whether the work on the second shift was a part of the assignment of the Claimant. We believe it was, in so far as a determination is necessary between the Claimant and the track-foreman. Numerous denial awards have been cited in which the facts concerned a claim for overtime where the work was performed by unassigned employes. We do not have such a fact situation here.

The claim is for six-hours at time and one-half. Claimant performed no service and therefore is not entitled to overtime rate. The claim will be sustained for six hours at straight-time 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 was violated.

AWARD

Claim sustained in accord with the opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January, 1964.