

Award No. 12689

Docket No. MW-12000

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MIDLAND CONTINENTAL RAILROAD

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

(1) The Carrier violated the effective Agreement when it suspended Section Foreman H. L. Walters from service during and throughout his regularly established eight hour work period on Friday, June 26, 1959.

(2) Section Foreman H. L. Walters now be allowed the exact amount of monetary loss suffered account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant was regularly assigned to the monthly rated position of Section Foreman rated position of Section Foreman on Section No. 111 at Wimbledon, North Dakota. He was regularly assigned to a 40-hour week, consisting of five days, eight hours each, Monday through Friday, with Saturdays and Sundays as designated rest days.

At 7:20 A. M. on Friday, June 26, 1959, the Carrier instructed and required the claimant to suspend work during and throughout his regularly established eight hour work period on that date.

In view of the fact that the Agreement rules provide that regularly established daily working hours will not be reduced below eight per day nor will the regularly established number of working days be reduced below five per week, except in a week in which a holiday occurs, the subject claim was properly and timely presented in behalf of the claimant.

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

The Agreement in effect between the two parties to this dispute dated November 1, 1960, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

lieved for eight hours' rest, for which rest period no compensation will be allowed.

CALLS. RULE 25. (a) *Employees notified or called to perform work outside of and not continuous with regular work period, will be allowed a minimum of two (2) hours and forty (40) minutes at time and one-half rate for two (2) hours and forty (40) minutes work or less, and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half time will be allowed on the minute basis.*

STARTING TIME. RULE 27. (a) *When one shift day service is employed, the starting time will not be earlier than 6:00 A. M. and not later than 9:00 A. M., and will not be changed without first giving employees affected 36 hours notice, such notice to state service requirements necessitating such change.*

REPORTING AND NOT USED. RULE 33. *Hourly rated employees required to report at usual starting time and place for the day's work and when conditions prevent work being performed, will be allowed a minimum of four (4) hours at pro rata rate. If held on duty over four (4) hours, actual time held on duty will be paid for.*

APPENDIX "A"

November 1, 1958

RATES OF PAY. Section III, Wimbledon. \$375.38 per mo.

These monthly rates comprehend payment for assigned eight hour work period on working days of month and eight hours at pro rata rate for each of the seven (7) holidays, as enumerated in Article II, Section I, of Agreement of August 21, 1954. Overtime to be computed as provided in overtime rules of Agreement in effect.

Reiterating, it is the Carrier's position, Rules of the Agreement herein mentioned substantiate the position that a section foreman is covered by the rules of hourly rated employees.

OPINION OF BOARD: This claim arises on behalf of Section Foreman H. L. Walters because he was suspended from service on June 26, 1959. The Carrier defends its action in suspending the Claimant on such day by asserting the so called "inclement weather rule" or Rule 21 (b) which provides:

"(b) When less than eight (8) hours are worked for convenience of employees, or when, due to inclement weather, interruptions occur to regularly established work period preventing eight (8) hours' work, only actual hours worked or held on duty will be paid for, (except as provided in Rule 33)"

The Organization takes the position that the above quoted inclement weather rules does not apply to the Claimant, a section foreman, because he is a monthly rated employee. It is Organization's contention that the section foreman must be paid even though inclement weather prevented his working on the day in question and even though he was suspended by the Carrier.

We agree with the Carrier that Rule 21 (b) above quoted is applicable to the Claimant, a section foreman, even though he is a monthly rated employee. The Scope Rule involved herein provides:

"RULE 1. The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employes in any and all sub-departments of the Maintenance of Way Structures Department, represented by the Brotherhood of Maintenance of Way Employes. * * * " (Emphasis ours)

It should be further noted that the above quoted Rule 21 (b) deals with all employes. The only exception mentioned therein is in reference to Rule 33 which provides for time allowance to hourly rated employes who are required to report to work. This exception is not applicable in this case so as to remove the section foreman from the applicability of Rule 21 (b). In addition, Rule 59 provides:

"(a) The rates of pay of employes covered by this agreement shall become a part of and be included in this agreement and are listed in Appendix A, * * * " (Emphasis ours)

Inasmuch as Claimant is included in Appendix "A", it appears that all employes were intended to be covered by the rules of the Agreement, unless such rule specifically excepts or exempts an employe from coverage. No such exception or exemption appears in Rule 21 (b). The Organization cannot be allowed to choose which rules should be applicable and which should not, rather the Agreement itself should provide the applicability or lack of same with regard to any rule.

For the above reasons, we hold that the section foreman is subject to Rule 21 (b). It being admitted that the weather was inclement, Carrier did not violate the Agreement by relying upon the provisions of such "inclement weather rule."

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

The Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1964.