

Award No. 13824

Docket No. MW-13973

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD
COMPANY**

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

(1) The Carrier violated the Agreement when it failed to call and use regularly assigned Section Laborer-Truck Driver Carmen Hoots to drive his regular truck on April 16 and 17, 1961 but assigned or otherwise permitted Section Foreman Lang to drive the truck on said dates.

(2) Carmen Hoots now be allowed seven and one-half (7½) hours' pay at the Section Laborer-Truck Driver's time and one-half rate because of the violation referred to in Part (1) of this claim."

EMPLOYEES' STATEMENT OF FACTS: The claimant is the regularly assigned Sectionman-Truck Driver on Section No. 22 and he has established and holds seniority in that rank. He is assigned to work on Mondays through Fridays of each week, with Saturdays and Sundays as rest days.

On Sunday, April 16, 1961, the Carrier called Section Foreman Roy Lange to clean snow from switches on Section No. 22. The Foreman called the Assistant Foreman but he did not call or attempt to call the claimant to drive the truck assigned to his gang.

Section Foreman Lange, who holds no seniority in the Sectionman-Truck Driver's rank, operated the truck which the claimant regularly operates on Mondays through Fridays. The Foreman worked from 8:00 P. M. on Sunday, April 16, to 3:30 A. M. on Monday, April 17, 1961.

The claimant was available, willing and able to have performed the work of his position had he been called and given the opportunity to do so.

This has always been determined by history, custom and practice and the service performed by the foreman in the instant case was strictly in conformity with the past practice.

It is significant to note that the title of Track Laborer-Truck Driver is not included in this listing and the rule has not been amended to include such a job title in its coverage.

"Rule 36 — Calls

"Except as otherwise provided in these rules, employes notified or called to perform work not continuous with the regular work period, will be allowed a minimum of two hours and 40 minutes at time and one-half and if held on duty in excess of two hours and 40 minutes, time and one-half rate will be allowed on the minute basis."

This rule simply provides for the payment due for callouts. The rule was complied with since the Foreman and Assistant Foreman were properly compensated thereunder. In this connection, however, it should be noted that were the claim found to be valid (which the Carrier denies) pay for time not actually worked is, under numerous awards of this Board, payable only at pro rata rate.

For the reason set forth above, the Carrier holds that the instant claim is completely without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is the one and only regularly assigned Track Laborer-Truck Driver on Section No. 22.

On Sunday, April 16, 1961, Carrier called the Section Foreman to clean snow from switches on Section No. 22. The Section Foreman called the Assistant Foreman to assist him. The Section Foreman operated the truck which Claimant was regularly assigned to operate. The Organization alleges that the failure of Carrier to call Claimant to operate the truck violated Section 24 (k) of the Agreement, which reads:

"(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."

The defense, advanced by Carrier, is that the Scope Rule of the Agreement is general in nature; and, therefore, the Organization bears the burden of proving that the truck on Section No. 22 had been operated exclusively by Claimant. We find the defense to be without merit.

Rule 24 (k) is specific and prevails over any general Rule in the Agreement.

It is not disputed that: (1) Claimant was the "regular employe" assigned to operate the truck; (2) the required work of driving the truck on

April 16 was "on a day which is not a part of any assignment," and (3) the work was not assigned to an eligible "available extra or unassigned employe." Under such circumstances Rule 24 (k) obligated Carrier to call Claimant, "the regular employe". We will sustain the Claim.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1965.