



Award No. 14917
Docket No. MW-14991

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
NORFOLK AND WESTERN RAILWAY COMPANY**

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

(1) The Carrier violated the agreement and established practice thereunder when it permitted Shirley Altizer to displace G. C. Marcum as Shovel Helper at about 11:25 A. M., E. D. T., on July 1, 1963. (Carrier's file M-1579.)

(2) G. C. Marcum be allowed eight (8) hours' pay at the Shovel Helper's straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 1, 1963, the claimant was assigned to the position of Shovel Helper on Tractor Shovel No. 15172, with an assigned work week extending from Monday through Friday (Saturday and Sunday were rest days).

The employees assigned to said Shovel had elected to and did make up eight (8) hours each week in accordance with the provisions of Rules 54 and 55 of the Agreement, in order to permit weekend visits to their homes. They were, therefore, permitted to and did depart for their homes at the completion of work each Thursday.

The factual situation was partially described in the following quoted excerpt from the undersigned General Chairman's letter of claim presentation:

"It is our information that on June 27, 1963, while Mr. Marcum was working as Helper on Tractor Shovel No. 15172, he was ordered by Roadmaster Wilkerson to report to Tractor Shovel No. 19084, for work Monday, July 1, 1963. Mr. Marcum left his home on June 30, 1963, aboard Train No. 26, and reported to this job Sunday night which was located at Altavista, Virginia. Upon arriving at work Monday morning, July 1, 1963, Mr. Marcum and Machine Operator, D. E. Smith was placed in a work train and arrived at Leesville, Virginia, about 11:25 A. M., E. D. T. At which time Mr. S. M. Altizer informed Mr.

On Monday, July 1, 1963, Marcum, instead of reporting at Leesville, Virginia, as instructed, reported at the point where the shovel was left over the weekend. Altizer reported at Leesville, Virginia, as instructed.

No work was performed with the shovel on July 1 prior to its movement to Leesville. The shovel arrived at Leesville in work train at about 10:25 A. M., E. S. T. Upon arrival of the shovel at Leesville, Marcum was displaced by Altizer.

The Employes filed the following claim:

"(1) Carrier violated the effective Agreement when it ordered or otherwise permitted Mr. S. M. Altizer to displace Mr. G. C. Marcum at about 11:25 A. M., E. D. T., July 1, 1963.

(2) G. C. Marcum be paid 8 hours, at the Shovel Helper's rate of pay for July 1, 1963. We are citing Rule 16, as well as any other Rule of MW Agreement, that might pertain, thereto, in support of this request."

The Carrier declined the claim.

OPINION OF BOARD: On June 27, 1963, Mr. Marcum (Claimant) was working as Helper on Tractor Shovel No. 15172. On that date, he was ordered by Roadmaster Wilkerson to report to Altavista, Virginia for service as Helper on Tractor Shovel No. 19084 effective July 1, 1963. Claimant reported for duty at Altavista, Virginia, as instructed, arriving Sunday evening. Tractor Shovel No. 19084, the Machine Operator and the Claimant were picked up by work train at regularly assigned starting time, Monday, July 1, 1963 and moved to Leesville, Virginia. Upon arrival at Leesville at approximately 11:25 A. M., July 1, 1963, Claimant was informed he was displaced by a senior shovel helper.

The Organization claims one day's pay for Claimant based upon an established practice whereby once an employe commences the day's work he is not subject to displacement by a senior employe during the regularly assigned hours of that day.

Carrier's position is that it is not obligated to notify employe in advance that he is displaced and is not so required to give notice even under the existence of the practice.

Carrier states in its submission that Claimant had been ordered to report to Leesville, Virginia and did not report there until 11:25 A. M. Hence, it concludes that claimant was properly displaced before he started work at Leesville.

The record reveals that the General Chairman's letter of presentation of the claim states that claimant "was ordered by Roadmaster Wilkerson to report to Tractor Shovel No. 19084, for work Monday, July 1, 1963 at Altavista, Virginia." The above statement of the General Chairman was not denied nor was it alleged by Carrier on the property that claimant was ordered to report to Leesville.

Inasmuch as the Carrier did not deny the statement of the General Chairman on the property, even though it later denied the statement in its brief,

and submitted no evidence in support thereof, it must be the conclusion that claimant reported to Altavista at the start of work on July 1, 1963 as ordered.

It must be recognized therefore that the grievant commenced work at starting time on July 1 at Altavista and was therefore at work while being transported by train from Altavista until his arrival at Leesville at 11:25 A. M. of that day.

It has been shown that a practice exists between the parties whereby displacements must be made prior to starting time. The established practice further reveals that once an employe commences work he will not be displaced at the loss of a day's pay. Carrier did not dispute this practice on the property and it must therefore be the finding that the established practice governs this situation.

Accordingly, the Board finds that the claimant was displaced after he commenced work and is therefore entitled eight (8) hours' pay at Shovel Helper's straight time.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 4th day of November 1966.