



Award No. 14993
Docket No. MW-15493

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it failed to give advance notice of at least five (5) working days to System B&B Welder M. J. Murphy, whose position was abolished in force reduction which was effective at 7:45 A.M. on April 10, 1964.

(2) The claim presented in behalf of System Welder M. J. Murphy by General Chairman H. J. McWilliams in his letter* of May 5, 1964 to the Carrier's Superintendent should have been allowed as presented because the Superintendent failed to give reasons for disallowance of the claim in his letter of declination dated June 17, 1964.

(3) Because of the violations referred to in Parts (1) and (2) of this claim, the Carrier now be required to allow the claim as presented in the aforementioned letter* of May 5, 1964. Mr. Murphy be paid eight (8) hours at his respective pro rata rate. (Carrier's File M-1006-64).

(*) This letter will be quoted as "Letter No. 1" in the Employees' Statement of Facts.

EMPLOYEES' STATEMENT OF FACTS: The claimant is a regularly assigned welder and, during the period herein involved, his headquarters were outfit cars located at Chicago, Illinois.

About a half hour before the end of his work day on April 9, 1964, Master Carpenter R. G. Brouse notified the claimant that because of a contemplated strike by the Carrier's operating employees, his position was abolished effective at 7:45 A.M. on April 10, 1964. Therefore, shortly after completion of his day's work, the claimant departed for his home at Cameron, Missouri.

At approximately 1:00 P.M. on April 10, 1964, the Carrier called the claimant at his home and instructed him to report back to work immediately.

his time roll, and he was so notified by letter dated April 20, copy attached hereto, identified as Carrier's Exhibit No. 1. He was allowed 15 hours 30 minutes' travel time, even though he definitely was not entitled to such payment under any rule of the agreement.

Part (2) of the Statement of Claim was **not** handled on the property before this claim was submitted to the Board.

The schedule of rules agreement between the parties effective September 1, 1949 and supplements thereto are by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant M. J. Murphy was a regularly assigned welder at Chicago, Illinois. Shortly before the end of his work day on April 9, 1964, Claimant was notified that because of a contemplated strike by Carrier's employes, his position was abolished effective 7:45 A.M., April 10, 1964. After completion of his day's work, Claimant departed for his home at Cameron, Missouri. At 1:00 P.M., April 10, 1964, Carrier called the Claimant at his home, and instructed him to report back to work immediately. He left Cameron at 4:15 P.M., and arrived at Chicago in time to report for work at 7:45 A.M., April 11. On his time roll for the first half of April, 1964, the Claimant reported eight (8) hours at the straight time rate for the basic day of April 10, 1964, and fifteen and one-half (15½) hours at the straight time rate as travel time.

When the General Chairman originally presented Murphy's claim to the Superintendent, the Superintendent replied, in part, as follows:

"Our records indicate that Mr. Murphy was called back to work the night of April 9, 1964, by Bridge Engineer's Office and was paid 15½ hours at half rate for travel time on the first half time roll for April 10, 1964, and was also paid 8 hours at pro rata rate for April 10, 1964, which was added on the last half of April, 1964 payroll, which he received on his regular pay day on May 12, 1964.

In view of the above, which is payment in full, there is no need of further handling of this claim; therefore, am closing file."

A subsequent letter to the General Chairman from the Superintendent stated:

"Information furnished you in my letter of May 14, 1964 was furnished from our office copy of payroll, and is in error, as we have now been notified by our Auditor of Expenditures office that Mr. Murphy was paid 15½ hours at the half time rate for travel and 8 hours at pro rata rate for April 10, 1964 on the April, 1964 payroll, and they are now going to allow Mr. Murphy another 15½ hours at the half time rate for April 10, 1964 and are deducting the 8 hours pro rata rate paid him for April 10, 1964; this will be done on the second half of June, 1964 time rolls.

Therefore, claim as presented in your letter of May 5, 1964 for System B&B Welder M. J. Murphy for 8 hours at pro rata rate for April 10, 1964 due to being erroneously notified that his job was abolished is hereby declined in its entirety."

Petitioner has presented a procedural question, the contention being that the claim presented in behalf of the Claimant in the letter of May 5, 1964, to the Carrier's Superintendent should be allowed as presented because the Superintendent failed to give reasons for the disallowance of the claim in his letter of declination, June 17, 1964, which was more than 60 days from the date of the presentation of the claim.

The position of the Petitioner falls because an examination of the record indicates, in compliance with conclusions reached in past awards of this Board, that a proper and adequate answer to the claim was given by the Carrier.

Having disposed of the procedural question presented, we will now proceed to a consideration of the merit of the Claim.

Article III of the June, 1962 Agreement provides that advance notice of not less than five (5) working days must be given before the abolishment of a position. It is conceded that no such notice was here given.

Carrier contends, however, under Article VI of the August 21, 1954 Agreement, that not more than sixteen (16) hours' advance notice of the abolishment of a position is required under "emergency" conditions such as a "strike," provided Carrier's operations are suspended in whole or in part. This provision cannot be applied here, because there was no strike called. Therefore, there cannot be any question but the Claimant would be entitled to be paid eight (8) hours due to not being permitted to work on April 10, 1964.

Carrier, however, contends further that by the payments made to the Claimant he has been overpaid for any loss he claims to have sustained; that the Petitioner, in fact, gave the following option to the Carrier:

"It is our position that Mr. Murphy is entitled to an adjustment of his wages in this instant case by either allowing him 8 hours at his basic rate for April 10th or an additional 7 hours and 45 minutes' travel time at his pro rata rate."

and that in the exercise of that option Carrier has fully compensated Claimant.

This statement was taken out of context, and a perusal of the letters of the General Chairman indicates that there never was an abandonment of Petitioner's position that Claimant was entitled to eight hours' basic pay. What he apparently intended to infer was that he wasn't concerned about how the entry was carried on Carrier's records by Carrier, but that claimant was entitled to an amount additional to that which had already been paid.

Carrier also urges that inasmuch as Claimant was not entitled to any travel time, under the Agreement, between his home and a designated assembly point he was wrongfully so paid and that Claimant, consequently, has already received more money than he is entitled to for the alleged violation. Whether or not he was entitled to travel pay was not discussed on the property — we cannot consider it here. See also Award 13185 (West).

The Claimant should be paid eight (8) hours' pay at his respective pro rata rate.

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 Employees involved in this dispute are respectively Carrier and Employees 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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 2nd day of December 1966.