

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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 assigned or otherwise permitted Section Foreman E. E. Chiles instead of Section Laborer Arlo Busick to perform overtime service on October 24, 1964 on Section A-6. (Carrier's file M-1020-65.)

(2) The Carrier violated the Agreement when it assigned or otherwise permitted Section Foreman E. E. Chiles instead of Section Laborer F. E. Harmon to perform overtime service on October 17, 1964 on Section A-6. (Carrier's file M-1021-65.)

(3) Section Laborers Arlo Busick and F. E. Harmon each be allowed eight (8) hours' pay at their respective straight-time rates because of the violations referred to in Parts (1) and (2) of this claim.

EMPLOYES' STATEMENT OF FACTS: Section Foreman E. E. Chiles and Section Laborers Arlo Busick and F. E. Harmon are regularly assigned to their respective positions in the gang assigned to Section A-6, with headquarters at Knoxville, Iowa. Their assigned work days are Monday through Fridays of each week. Saturdays and Sundays are designated rest days for all of the employees assigned to that gang. Claimant Busick has established and holds seniority as a section laborer as of August 26, 1944. Claimant Harmon has established and holds seniority as a section laborer as of May 1, 1964.

On October 14, 15, 16, 17, 19, 20, 21, 22, 23 and 24, 1964, a contractor's machine operator performed work on or near the track assigned to Section A-6 and it was necessary that flag protection be provided. Section Laborer Harmon was assigned to perform flagging duties on October 14, 15 and 16, 1964. However, when it became necessary to perform work of the same character on Saturday, October 17, 1964, Section Foreman Chiles performed that work. For this service he received eight (8) hours' pay at his time and one-half rate.

On October 19, 1964, Claimant Busick returned from his scheduled vacation. He was assigned to perform flagging duties on October 19, 20, 21, 22 and

23, 1964. However, when it became necessary to perform flagging duties on Saturday, October 24, 1964, Section Foreman Chiles again performed the flagging duties. For that service he received eight (8) hours' pay at his time and one-half rate.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

CARRIER'S STATEMENT OF FACTS: The dispute involved here was handled on the property as two separate claims. Both claimants are section laborers assigned to Section A-6, Knoxville, Iowa. Claimant Busick's seniority date is August 26, 1944, and claimant Harmon's seniority date is May 1, 1964. Both claims involve work performed on a Saturday rest day by E. E. Chiles who is Foreman of the gang to which claimants are assigned. Foreman Chiles has a seniority date of April 17, 1926.

On the two dates specified in the claim, Foreman Chiles worked alone, patrolling his section, conferring with a contractor who was performing construction work adjacent to Carrier's right of way, performing flagging work at the construction site, and exercising other supervisory duties related to his foreman's position. No laborers were called on either date because the work performed required the service of only one employee.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The two Claimants and the Section Foreman involved in this dispute are members of Section Gang No. A-6 with headquarters at Knoxville, Iowa. Their regular work assignments are from Monday through Friday each week with assigned rest days of Saturday and Sunday. Between October 14th and October 24, 1964, Carrier was required to provide flag protection for a contractor's outfit working on or near track included in the territory of Section Gang No. A-6. Accordingly, the Section Foreman assigned Claimant Harmon to flagging service on October 14, 15 and 16, 1964. Claimant Busick, a more senior member of the Section Gang, returned from vacation on October 19, 1964 and was assigned such duties from Monday, October 19 through Friday, October 23, 1964. The Section Foreman performed the flagging service on two rest days, Saturday, October 17 and Saturday, October 24, 1964, for which he was paid at the time and one-half overtime rate.

The Petitioner alleges that Carrier violated Rule 39 (g) of the Agreement which reads:

"Which 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 Petitioner contends that since Claimants were assigned to and performed the flagging service on the dates preceding their assigned rest days in each instance, they are entitled to perform that service on the following rest days.

The defense advanced by Carrier is that the disputed work is not exclusively assigned to any one member of a gang or group of employes, but is assigned to the gang or group as a whole, including the foreman. Carrier asserts that the foreman was needed on the rest days involved herein because of a multiplicity of duties and that section foremen have always been required to perform any and all work involving the maintenance and protection of their sections.

Carrier relies primarily on the Scope Rule of the Agreement which is general in nature and contends that the burden rests upon Petitioner to show that Claimants have an exclusive right to perform the disputed work. However, Rule 39 (g) is specific and prevails over any general rule in the Agreement. Awards 13824 and 14029.

The flagging service was not assigned to any eligible "available extra or unassigned employe" on October 17 and 24, 1964, the respective rest days of the Claimants, and Rule 39 (g) required the Carrier to call the regular employe assigned such work instead of allowing the foreman to assign the work to himself on an overtime basis.

Carrier asserts that the foreman was required on October 17 and 24, 1964 to perform several functions, including the flagging service, but has offered no probative evidence in support of its assertion. In any event, the language contained in Rule 39 (g) is clear and unequivocal and we find that Carrier should have called the Claimants to perform the required work on their respective rest days, which they had regularly performed on the dates preceding their assigned rest days. Awards 14191 and 13824. Accordingly, we will sustain the Claim.

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 was violated by Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1966.

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