



Award No. 15400
Docket No. MW-15996

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

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

(1) The Agreement was violated when, instead of calling and using Motor Truck Operator James B. Ray to operate Truck No. 48 (assigned to system gang No. 3) on September 6 and 12, 1964, it assigned or otherwise permitted Foreman J. Nelson to operate said truck on said dates. (Carrier's file 013-293-16.)

(2) Motor Truck Operator James B. Ray be allowed (6) hours' pay (3 hours for each date) at his time and one-half rate because of the violations referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant James B. Ray was regularly assigned as a motor truck operator on System Gang 3 with a work week extending from Monday through Friday (rest days were Saturday and Sunday).

On Sunday, September 6 and Saturday, September 12, 1964, the Carrier called Foreman J. Nelson of System Gang 3 to make "track repairs due to a switch having been run through." In each instance, Foreman Nelson called a laborer from his gang to assist with the work but did not call or even attempt to call the claimant to drive the truck (Truck No. 48) assigned to said gang. Instead he operated the truck which was used to transport himself and the laborer as well as tools and material to and from the respective work sites.

On Sunday, September 6, 1964, Section Foreman J. Nelson, accompanied by the laborer, departed from headquarters at Breman Avenue at 1:00 P. M. and returned thereto at 4:00 P. M. On Saturday, September 12, 1964, they departed from said headquarters at 10:00 A. M. and returned thereto at 1:00 P. M.

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

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

supervisory functions. This does not mean that the Foreman is then barred from operating the truck in instances, such as those giving rise to the present claims, where a truck driver is not needed.

There is no basis for your claims and they are denied.

If you wish to discuss these claims further, I shall be pleased to arrange a conference at your request."

Although it will be noted that the Manager-Labor Relations preferred a conference to discuss the claims if the General Chairman so desired, none was requested. As a consequence, the present claims were never discussed in conference on the property before being submitted to the Third Division of the National Railroad Adjustment Board by the Organization.

The wages and working conditions of the claimant in this dispute are covered by Schedule Agreement between the parties effective May 1, 1952, copy of which is on file with this Division of the National Railroad Adjustment Board.

OPINION OF BOARD: It is the position of Carrier that this Board should not consider this claim on its merits since it was not discussed in conference on the property as required by the Railway Labor Act.

While the Petitioner, in its rebuttal, denies Carrier's assertions, we have searched the record and find no evidence that a conference was held on the property; therefore, the claim is dismissed. Awards 15330 (House), 15212 (Kabaker), 15148 (Hall), and 15159 (Engelstein), among others.

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 Claim was barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1967.

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