



Award No. 15588
Docket No. MW-16012

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

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

(1) The Carrier violated the Agreement when it used B&B employees junior to B&B Carpenter Bobby Smith for overtime service on the Napoleon and Marin Bridges at San Francisco, California on September 18, 19, 26 and October 3, 4, 5, 1964.

(Carrier's File MofW 148-241.)

(2) B&B Carpenter Bobby Smith now be allowed fifty-eight and one-half (58½) hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant Bobby Smith and Messrs. Frank Ramirez and John Ruiz were regularly assigned as carpenters on B&B Gang No. 1, with Claimant Smith being the senior in that class. Said gang, which was supervised by Foreman Ray Backman, was assigned to a work week extending from Monday through Friday (rest days were Saturday and Sunday).

On or about September 7, 1964, B&B Gang No. 1 began work on a project at Napoleon and Marin Bridges at San Francisco, California. Foreman Backman was authorized to work a part of his gang during overtime hours and on rest days until the project was completed. In connection therewith, he requested the members of his gang desiring to be used for such service to so notify him. The claimant was among those who expressed a desire to be called and used for said overtime service.

In compliance with his request and in accordance with his seniority, the claimant was notified and used to perform overtime service on September 11, 12, 13 and 14, 1964. However, instead of notifying and using him for such service on September 18, 19, 26 and October 3, 4, 5, 1964, Foreman Backman notified and used junior Carpenters Frank Ramirez and John Ruiz.

A total of fifty-eight and one-half (58½) hours were consumed by the junior carpenters in the performance of the subject overtime work.

By letter dated December 17, 1964 (Carrier's Exhibit C), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated January 25, 1965 (Carrier's Exhibit D), the latter denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic facts in this claim are not in dispute. The Claimant was a regularly assigned member of a Bridge and Building gang, working on a project at San Francisco, California. On the dates involved in the claim, Carrier assigned two junior Carpenters to perform overtime work.

There is no dispute that the Claimant had a contractual right to the overtime work. The Carrier contends that Claimant refused the overtime work. The Employees deny Carrier's allegation and state that Claimant did not at any time refuse to perform overtime work. Both parties produced statements to support their position. If by his own action Claimant deprived himself of the work he would not be entitled to a sustaining award.

This Board has only appellate jurisdiction. We have neither the duty or authority to weigh the evidence presented during the handling on the property. When we are faced with an irresolvable conflict of facts we are forced to dismiss the Claim.

Since we have no means of resolving the conflict in the instant case we will dismiss 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 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 should be dismissed as set out in Opinion.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1967.

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