Award No. 16642
Docket No. MW-17467

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

TEXAS CITY TERMINAL RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned Track Laborer Elias Garcia to drive a truck on November 5, 9 and 10, 1966, and compensated him at the track laborer's rate of pay for such service. (System File Nos. TCT-21/013.293.01).

(2) Track Laborer Elias Garcia be allowed the difference between what he should have received at the truck driver's rate and what he received at the laborer's rate of pay because of the violation referred to within Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant Garcia is regularly assigned as a track laborer, with a work week extending from Monday through Friday (Saturdays and Sundays are rest days).

On Saturday, November 5, 1966, it was necessary to replace a broken rail at the Amoco Chemical Plant. The Carrier called and used the claimant to drive the truck that was used to transport the employes, material and tools necessary to perform the rail replacement work. The claimant was compensated for such service at the track laborer's rate for two hours and 40 minutes. At the close of the work period on November 9, 1966, the Carrier required the services of a truck driver to transport employes to the scale pit to unload slag and, at the close of the work period on November 10, 1966, a truck driver was needed to transport employes and tools to the Amoco Chemical Plant to regauge and respike track. On each of those dates, the Carrier assigned the claimant to drive the truck used in the performance of this overtime work. The aforedescribed work required one (1) hour on November 9 and one (1) hour and 30 minutes on November 10, 1966. The Carrier compensated the claimant for his services as a truck driver at the track laborer's rate of pay.

During conference on March 31, 1967, the Carrier's highest appellate officer offered to pay the claimant the truck driver's rate of pay for the time

consumed in driving the truck from the assembly point to the work location but refused to pay him at that rate for the time consumed in assisting in the performance of the work involved and for the time consumed in returning to the employes' assembly point.

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

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: This claim is a companion claim to the claim of Gilbert Reyes and is apparently an outgrowth of an attempt to justify the claim of Gilbert Reyes and was first presented to the Carrier by General Chairman E. Jones in a letter dated December 28, 1966 (Exhibit A). Chief Engineer Gresham denied the claim (Exhibit B) under letter January 4, 1967, stating that the driving of the truck was only incidental to the regular performance of his duties in the track work. General Chairman appealed the claim to Mr. Wimberly, President, under date of January 30, 1967 (Exhibit C), which was denied by letter of February 14, 1967 (Exhibit D). General Chairman then appealed, under date of February 24, 1967 (Exhibit E) and requested conference date. March 7, 1967, the appeal was denied and a conference established March 31, 1967 (Exhibit F). During the conference March 31, General Chairman presented a letter dated March 28, 1967 (Exhibit G). The results of the conference were written to General Chairman under date of March 31, 1967 (Exhibit H). General Chairman apparently undertook the self-appointed job of reporting secretary of the conference in his letter of April 6, 1967 (Exhibit I), setting forth many items that are irrelevant, erroneous, and, for the first time, advising the specific awards to which he referred in conference. This led to the notice previously referred to by President Crotty. The total time that could be charged to driving a truck in any of the three instances would constitute less than five minutes per claim date.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is a regularly assigned track laborer with a work week of Monday through Friday with Saturdays and Sundays as rest days. On the dates in question, he, as a member of Carrier's Track forces, was called to perform track work. Incidental to his principal function of Track laborer, he drove a ¾ ton pick-up general purpose truck to and from the job sites, hauling tools, equipment etc. The total time actually consumed, cumulatively over the three days was approximately 15 minutes, for which he is requesting the difference in pay between the truck driver's rate and the laborer's rate of pay.

It is the position of the employes that Rules 1 and 2 of Article XXXI and Rule 1 of Article XXIII were violated. They read as follows:

"ARTICLE XXXI.

Rule 1. The rate of pay of employes covered by this agreement shall become a part of and be included in this agreement, and when new positions are established in the Maintenance of Way and Structures Department a suitable rate of pay for such new position or positions shall be negotiated.

Rule 2. If in making up the list of rates of pay, and positions which should have been included, were omitted they shall be immediately included."

"ARTICLE XXIII.

Rule 1. An employe coming within the scope of this agreement required to and performing work during the whole or a part of his daily assignment (whether or not covered by agreements) carrying a higher rate of pay, will be allowed actual time worked thereon at the higher rate of compensation. When temporarily assigned by the proper officer to a lower rated position his rate of pay will not be reduced."

It is obvious from a reading of Rule 1, Article XXXI, that rates of pay for each of Carrier's employes are part and parcel of the Collective Bargaining Agreement. From a review of this record however, we are unable to determine even with a remotely reasonable degree of certainty, whether the parties have a specific rate of pay for a truck driver of a general purpose vehicle. The evidence on this point is extremely weak. Accepting at face value a letter introduced into evidence for the first time in the employes rebuttal statement as factual, the differential of pay involved falls squarely into the category of "de minimis." We mention this only by way of addendum, because the Organization in the first instance has not presented a substantial body of evidence pre-requisite for a sustaining award and on that basis, we will deny 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 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 not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October 1968.

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