

Award No. 3060

Docket No. MW-2922

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI PACIFIC LINES

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

1. That the Carrier violated Agreement in effect by assigning the moving of a platform from Mission to Abney to an outside contractor;
2. That each member of the B&B gang, D. Fisher, Foreman, and mechanics, D. R. Perry, L. R. Ryan, J. B. Lamp, J. D. Amason, A. L. Alexander, and J. W. Morris shall be paid 8 hours on July 4, 1943, and 10 hours on July 5, 1943, at overtime rate.

EMPLOYEES' STATEMENT OF FACTS: On July 4 and 5, 1943, a wood platform was moved from Mission to Abney, Texas. The moving of this platform was let to an outside contractor and the work involved in moving of the platform was performed by men hired and paid by such contractor. On the dates when this platform was moved by the contractor, the claimants, bridge and building employees holding seniority rights in the Bridge and Building Department on the territory over which this platform was moved, were laid off and not permitted to work.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 1, Scope, of agreement in effect between the Missouri Pacific Lines and the Brotherhood of Maintenance of Way Employees, reads:

"These rules govern the hours of service and working conditions of all employees herein named in the Maintenance of Way Department and sub-departments thereof (not including supervisory forces above the rank of foremen) as follows:

(a) Bridge and Building Department:

Foremen
Assistant Foremen
Water Service Foremen, Assistant Foremen, Repairmen,
Helpers, Laborers and Pumpers
Motor Car Repairmen and Helpers
Mechanics (carpenters and painters) helpers and laborers.

(b) Road Track Department:

Section and Extra Gang Foremen
Assistant Section and Extra Gang Foremen

When consideration is given to the above facts it is clearly evident that there is no basis in equity nor under the agreement between the Carrier and its Maintenance of Way Employees for the contention that the seven claimants in this case are entitled to eight hours at the time and one-half rate on Sunday, July 4, 1943 and for ten hours at the time and one-half rate on Monday, July 5, 1943, therefore, the contention of the Employees should be dismissed and the claim, accordingly, denied.

OPINION OF BOARD: The question involved here is whether the Carrier violated the Agreement by assigning the moving of a platform from Mission to Abney, Texas, to an outside contractor. Claim is made for two days on which employees were not working, namely, July 4, 1943, a Sunday, and July 5, 1943, a holiday.

It is conceded in behalf of the Carrier in this case that work of the character here involved is covered by the Agreement between the parties and under ordinary circumstances would be performed by the Carrier's B&B forces. But, Carrier asserts, this was an extraordinary situation where the facility was required to be moved within a limited time and Carrier's forces were engaged on programmed work, working one hour overtime, and Carrier did not have enough men to keep abreast of its current maintenance work. That Carrier has been confronted with difficulties in securing the necessary labor for work to be performed there can be no doubt. This argument in behalf of Carrier would be persuasive were it not for the fact that the Agreement contains no exception to Carrier's obligation to give the work in question to those coming within its scope. See Awards 2812, 2819. Compare Awards 2701, 1453.

In the awards cited in behalf of Carrier, such as 1042, 1453 and 1610, the outside work was done while employees were regularly employed and they lost no time by reason thereof, thus distinguishing these cases from the case at bar where employees were not working on the two days for which claim is made.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 21st day of December, 1945.