

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF
TEXAS, (Berryman Henwood, Trustee)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that section laborers F. J. Seyer, J. H. Griffin, C. J. Seyer, J. C. Carroll, Louis Carroll and J. R. Mills employed in section crew with headquarters at Rockview, Missouri, shall, under the application of Schedule Rule 7-19, be paid the difference between what they received at the rate of 57½c per hour applicable to section laborers in the service of the St. Louis Southwestern Railway and that which they should have received at the rate of 60c per hour applicable to section laborers in the service of the Missouri Pacific Railroad for the time they worked on the Missouri Pacific Railroad from May 11th to 16th, 1944, inclusive.

EMPLOYEES' STATEMENT OF FACTS: During the period from May 11 to 16, 1944, inclusive, the claimants, section laborers F. J. Seyer, J. H. Griffin, C. J. Seyer, J. C. Carroll, Louis Carroll and J. R. Mills, regularly employed on the Rockview Section, St. Louis Southwestern Railway, were directed to perform service in connection with repairing track damaged by washouts on the Missouri Pacific Railroad near Gale, Illinois.

The rate of pay applicable to section laborers at Rockview, St. Louis Southwestern Railway, was 57½c per hour. The rate applicable to laborers employed in connection with repairing track damaged by washouts on the Missouri Pacific Railroad near Gale, Illinois was 60c per hour.

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

POSITION OF EMPLOYEES: As stated in Employees' Statement of Facts, the claimants, F. J. Seyer, J. H. Griffin, C. J. Seyer, J. C. Carroll, Louis Carroll and J. R. Mills, were employed on the St. Louis Southwestern Railway as section laborers with headquarters at Rockview, Missouri at the rate of 57½c per hour. During the period from May 11 to 16, 1944, inclusive, they were directed to work on the Missouri Pacific Railroad near Gale, Ill., assisting Missouri Pacific track laborers in connection with repairing track damaged by washouts. The laborers employed by the Missouri Pacific Railroad in connection with this work were paid at the rate of 60c per hour. The claimants, the St. Louis Southwestern Railway section laborers, were performing exactly the same kind of service as did the laborers employed by the Missouri Pacific Railroad. Thus, during the period engaged in assist-

in the instant case for the reason that the claim presented by the Employees in that award involved a section laborer who rendered service as a Water Service Mechanic's Helper, or a different class of service than that to which he was regularly assigned. In the case now before the Board, the Employees do not claim that there was a different class of service performed; their claim is based solely on the premise that, under the application of Rule 7-19, the six employees involved are entitled to 60 cents an hour applicable to section laborers in the service of the Missouri Pacific Railroad in lieu of 57½ cents an hour applicable to St. Louis Southwestern Railway Company section laborers at Rockview, Missouri.

The employees concerned were Cotton Belt employees throughout the period May 11 to 16, 1944, inclusive. As such they retained their seniority rights and rights to representation as Cotton Belt employees. They were not during this period Missouri Pacific employees entitled to the rates and rules applicable to Missouri Pacific employees. The work they performed during this period was upon the line jointly used by Cotton Belt trains and Cotton Belt was interested in restoring the track for the movement of trains with minimum delay. Missouri Pacific would not have called upon Cotton Belt for help in this emergency if they had been able to employ men to perform the required work at that time. There was an acute manpower shortage and after the Missouri Pacific found itself unable to employ any more men than they had employed, they called upon the Cotton Belt for assistance.

An important question is presented in this controversy. Suppose the conditions to be reversed, i.e., the washout was on the Cotton Belt and Missouri Pacific employees sent to work on the Cotton Belt to assist in restoring communication. Would it be reasonable to expect Missouri Pacific employees in such a case to accept lower rates for the work performed on the Cotton Belt than they were entitled to receive as Missouri Pacific employees under Missouri Pacific's schedule? In the present case, Cotton Belt employees are in effect demanding rates of pay to which they would be entitled if they were Missouri Pacific employees, which they were not. Their rights as Cotton Belt employees are established by Cotton Belt and not by Missouri Pacific schedule.

Under the facts herein presented, the Carrier submits that Rule 7-19 of the current agreement with the Brotherhood of Maintenance of Way Employees does not support the claim of the Employees that the section laborers involved are entitled to a rate of 60 cents an hour. They were neither transferred nor assigned to work under Missouri Pacific Company supervisors. Missouri Pacific Company supervisors exercised no control over them other than to inform their foreman where he and his men would work. While performing emergency work at Gale, they were working strictly under the provisions of the current agreement between the Brotherhood of Maintenance of Way Employees and the St. Louis Southwestern Railway Lines.

For these reasons, the Carrier respectfully requests that the Employees' claim be denied.

OPINION OF BOARD: Claimants are section laborers in the service of the St. Louis Southwestern Railway for which service they are compensated at 57½ cents per hour. From May 11th to 16th, 1944, inclusive, they were directed to work as section laborers for the Missouri Pacific Railroad, whose rate for similar service was 60 cents per hour. Claimants contend that they are entitled to be paid at 60 cents per hour for the time worked for the latter railroad.

The Organization cites Rules 7-19 of the current Agreement in support of the claim. It reads:

"An employee working on more than one class of work on any day will be allowed the rate applicable to the character of work preponderating for the day, except that when temporarily assigned

by the proper officer to lower rated positions, when such assignment is not brought about by reduction of force or request or fault of such employees, the rate of pay will not be reduced.

"This rule is not to permit using regularly assigned employees of a lower rate of pay for less than half of a work day period to avoid payment of higher rates."

It is the contention of the Carrier that the foregoing rule has no application for the reason that Claimants performed the same type of work for the Missouri Pacific Railroad that they performed for the St. Louis Southwestern Railway and, consequently, it could not constitute a different class of work within the meaning of that rule. This view seems to have been rejected by this Board as early as Award No. 674 wherein it was said:

"The positions to which the claimants were moved, in the opinion of the Division, are of a 'higher classification' if for no other reason than that they carry higher rates of pay than the positions of section laborers."

The foregoing quotation was again cited in Award No. 2094 with approval. It is in line with a previous decision of the United States Railroad Labor Board, Decision No. 2419, wherein it was held where identical work was done on another division with a higher rate of pay "that the employees of the Black Hills division were entitled to the rate applicable to the employees of the Wyoming division for the services performed on the Wyoming division".

The Carrier relies upon Award No. 1447 as supporting its position. The denial of the claim considered in that award was based upon the premise that claimants were not temporarily assigned to new positions but were simply doing temporary emergent work at another location. Irrespective of the correctness of the foregoing award, it decides the claim on an issue that it is not in the claim before us. The claim should be sustained.

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 parties waived oral hearing thereon;

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 as alleged.

AWARD

Claimed sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago Illinois, this 17th day of April, 1946.