

Award No. 4139

Docket No. MW-4077

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

Trackman Harley Erton be allowed the difference in pay between what he did receive at the straight time rate and what he should have received at the overtime rate for service performed on Sunday, June 30, 1946, and Sunday, September 8, 1946.

JOINT STATEMENT OF FACTS: On Sunday, June 30, 1946, and Sunday, September 8, 1946, the regular relief telegraph operator in tower at Springfield, Illinois, was sick and unable to work. Trackman Harley Erton, Section DA-7, Springfield, Illinois, was called and did work eight (8) hours on each of the dates as towerman and was paid the telegrapher's pro rata rate therefor.

Agreement between the parties bearing effective date of September 1, 1934, (reprinted June 1, 1945), is by reference thereto made a part hereof.

POSITION OF EMPLOYEES: Trackman Harley Erton had formerly been employed with the Carrier on a position of towerman, but when such position was converted to a position of operator-leverman, Erton could not qualify because of his inability to write. To substantiate such facts we are attaching to this submission as Employees' Exhibit "A" a letter to General Chairman Frank L. Noakes from Superintendent E. H. Hallmann dated September 24, 1946, in which Mr. Hallmann states: "I believe you understand that Erton formerly was a towerman but had to give up the position when converted to operator-leverman due to his inability to write."

Harley Erton then became a Trackman at Springfield, Illinois. While working in the capacity of a trackman, coming under the scope of the agreement between the Brotherhood of Maintenance of Way Employes, Harley Erton was called for duty in the tower at Springfield because of an emergency. He was paid the towerman's rate of pay of \$1.05½ per hour. The Carrier therefore recognizes the fact that Harley Erton was performing service of a higher class than trackman, and in accordance with the provisions of Rule 51, quoted below, were paying him the basic rate applicable to the job.

"Rule 51. An employe working on more than one class of work four (4) hours or more on any day will be allowed the higher rate of pay for the entire day. When temporarily assigned by the proper officer to a lower-rated position, his rate of pay will not be reduced."

and that Claimant Erton received the proper rate in accord with the provisions of the Telegraphers' Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim on behalf of Trackman Erton for an allowance of the difference in pay between what he was paid at the straight time rate and what the Organization contends he should have received at the overtime rate for service which he performed as towerman on two Sundays in June, 1946.

The facts as stated in a joint submission discloses that on the two dates in question the regular relief telegraph operator in the tower at Springfield, Illinois, was sick and unable to work and claimant was called and did work eight hours on each of said dates. He was paid for that service the telegrapher's pro rata rate.

Claimant was a trackman regularly assigned six days a week with Sunday off. Had he worked on the Sundays in question on his regularly assigned position of trackman he would have been paid, under Rule 34 of the Maintenance of Way Agreement, at the rate of time and one-half of his pro rata rate as trackman. While he had formerly served in the position of towerman he had forfeited his seniority in the Telegrapher group when he became a trackman under the Maintenance of Way Agreement.

The Carrier contends that since the towerman position was under the Telegraphers' Agreement the claimant was paid the rate provided by the Telegraphers' Agreement and that no provision of the Maintenance of Way Agreement was applicable since the work of the position of towerman was covered by the Telegraphers' Agreement.

Carrier relies on Award No. 3703 of this Division in which two Maintenance of Way employes who, during their regular tour of duty did about ten minutes work covered by the Signalmen's Agreement and were held to be entitled to Signalmen's rate under the Signalmen's Agreement Call Rule. In that Award it was stated that:

"We think the Maintenance of Way Agreement contemplates work which comes only within that Agreement."

The Carrier there contended that the claimants were only entitled to the difference between their regular rate and signal maintainers rate under Rule 19 (the Composite Rule) of the Maintenance of Way Agreement and there was no basis for the claim for a call under an agreement covering another class of employes.

The Carrier's contention there, while inconsistent with the Carrier's position in the present claim, conformed to many prior awards of this Division, to-wit: Awards 674, 1544, 1598, 1600 and 2169.

In Award 2169 we said that where a Maintenance of Way employe is required to fill the place of another employe receiving a higher rate of pay and who is under another agreement, the other "agreement simply affords evidence of the rate of pay to which" the Maintenance of Way employe is entitled under the Composite Rule of his own agreement. We believe this is a sound statement.

The Maintenance of Way Agreement furnishes the only rules, terms and conditions under which a Maintenance of Way employe is working for the Carrier. The Composite Rule of the Maintenance of Way Agreement should apply to the service which a Maintenance of Way employe is required to give even on work covered by another agreement. On such service the other rules of the Maintenance of Way Agreement should likewise apply.

In Award No. 1598 we not only invoked the Composite Service Rule of the Maintenance of Way Agreement, but also another rule of the same agreement which provided for overtime payments although in that case the Maintenance of Way employe was taking the place of a man who was paid on a monthly basis for all work performed during the month.

The Carrier here also cites Awards 2729 and 3674. The factual situations in those two cases were essentially different from the situation in the instant case. In each of those cases a Telegrapher, also holding Seniority under the Dispatchers' Agreement was called for service as a Dispatcher. Where an employe holds seniority under and is subject to the rules of two different agreements with the Carrier there is valid reason for hold for holding that he should be bound by the rules of the Agreement covering the work he is doing.

The Carrier finally insists that since the two days here in question were claimant's days off he could use them as he saw fit, go fishing, work in a filling station, or a grocery, or for the Carrier on work outside of the Maintenance of Way Agreement; and that if so worked for the Carrier he would have no more claim to time and one-half than if he worked for a grocer on that date. This argument ignores the fact that claimant was a regular employe of the Carrier and covered by an Agreement which prescribed all of the rules, terms and conditions of such employment.

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 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 claim should be allowed.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1948.