

Award No. 4372

Docket No. MW-4352

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

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

(1) That the Carrier violated the Vacation Agreement by not assigning to certain of its Coal Chute Foremen, Coal Chute Operators, Coal Chute Laborers, Pumpers, Crossing Watchmen, and Bridge Tenders a vacation of twelve (12) consecutive work days with pay;

(2) That the aforementioned employees should have been paid at the rate of time and one-half of their basic daily rate for all rest days or holidays occurring within their twelve (12) day vacation period.

EMPLOYEES' STATEMENT OF FACTS: The agreement in effect provides that Coal Chute Foremen and Coal Chute Operators are paid a monthly salary based on 204 or 208½ hours of service, and are allowed pay at the punitive rate for service performed in excess of eight hours per day or on Sundays, holidays, or regular assigned rest days.

Coal Chute Laborers are paid on an hourly basis. When required to work in excess of eight hours per day or on Sundays, holidays, or rest days, they are paid for such service at punitive rates.

Prior to December 16, 1944, all Crossing Watchmen, Pumpers, Bridge Tenders, et cetera, were assigned to a calendar work-month, and were paid a monthly rate based on a calendar month. Work performed on Sundays and holidays was paid for on pro rata basis.

After December 16, 1944, when there was a permanent change of the incumbent on the job, seven-day positions then automatically became six-day positions. The employees working on such positions were assigned one day of rest in seven, and if required to work on Sundays, rest days, or holidays, they are paid time and one-half in addition to their monthly rate.

Many of these Coal Chute Foremen, Coal Chute Operators, Coal Chute Laborers, Crossing Watchmen, Pumpers, Bridge Tenders, et cetera, although assigned to six-day positions, had been required for a long time to regularly perform service on seven days per week, and in accordance with the Schedule Agreement were paid at the punitive rates in addition to their monthly rate.

In assigning the vacation dates, the Carrier assigned a period of twelve days, plus the number of rest days or holidays occurring within such period.

OPINION OF BOARD: Throughout the entire record the Carrier has registered vigorous protests in regard to Petitioners' failure to furnish the Carrier with dates, places and names of the employees in whose behalf the claim is made; the Carrier declares that the designation "certain of its Coal Chute Foremen, Coal Chute Operators, Coal Chute Laborers, Pumpers, Crossing Watchmen, and Bridge Tenders" is too general, vague and indefinite. The Board finds that there is merit to this contention, in that the record is not, in fact, in such a condition as to make possible a proper analysis and determination of the issues involved in the claim; actually, the issues involved in the claim cannot be made out clearly from the record as it now stands. In Award 2125 this Board stated that it should not attempt to decide claims of employees who were not before the Board and whose exact status was not known. Also, in Award 906, this Board said:

"The claim in this case should be restricted to the employees specifically named therein, since the correspondence shows that they were the only ones discussed in conference."

The First Division of this Board, in Award 11642, said:

"* * * We do not propose to require the Carrier to search its records to develop claims for unidentified trainmen on unspecified dates. * * *"

Also see Third Division Awards 4305, 4117 and 1566, as well as First Division Awards 12345 and 11293.

Rule 17 (c) of the parties' Agreement of May 1, 1938, provides, in part:

"(c) Other Claims. Where an employee feels that he has been unjustly dealt with in other than discipline matters, or that any other provisions of this agreement have not been complied with, he or his representative may handle such matter with his immediate superior or appropriate officer of the carrier. * * *"

The Carrier contends that this rule contemplates, and that the practice has been, that the parties discuss individual cases and facts in handling claims. The Board believes that it was intended that even when broad principles are involved, disputes should be based upon individual claims in order that both sides might know exactly what is involved. On February 17, 1948, the Carrier wrote Petitioners requesting specific names and dates; the Carrier did this again on March 17, 1948, and yet again on June 11, 1948. Some time after the last-mentioned letter was written the Petitioners called attention to a grievance of employee V. W. Collins; this grievance had been considered by the Carrier's Division Superintendent, and it had been denied by that official. Rule 17 (b) required that if Collins was dissatisfied with the decision he should make an appeal within the specified time; Collins did not comply with the requirements of Rule 17 (b) and it must be held that his claim is not properly before this Board.

It should be noted that while Petitioners have included within the claim a claim in respect to holidays occurring within the vacation period, the record indicates that they have submitted little, if anything, to develop and substantiate that part of the claim.

In view of the above considerations the case will be remanded to the parties, without prejudice, for further development of the record in accordance with the views expressed above.

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 there is not sufficient evidence upon which to base a determination of the claim.

AWARD

Claim remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1949.