

Award No. 4393
Docket No. MW-4458

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) That the Carrier violated the Agreement by allowing employees junior in the service to Steel Bridgemen J. E. Wolfe and J. L. Dement to work at the tie plant at Denison, Texas, on May 10 and 11, 1948, while the claimants were unemployed;

(2) That Steel Bridgemen J. E. Wolfe and J. L. Dement be now compensated for twelve (12) hours pay at their respective rates because of the Carrier's violation of the Agreement.

EMPLOYEE'S STATEMENT OF FACTS: On May 10 and 11, 1948, the weather was inclement and prevented the performance of work by the Steel Bridge Gang who were engaged in making repairs to Red River Bridge.

However, two members of this Steel Bridge Gang—P. Gary and P. O'Dell were assigned by Steel Bridge Foreman Turner to work with the B&B gang under the supervision of B&B Foreman J. E. Foster who were performing certain structural work at the tie plant at Denison, Texas. This B&B Gang had need for some welding and cutting work to be performed. It was on this account that Gary and O'Dell were working with them.

While Steel Bridgemen J. E. Wolfe and J. L. Dement were unemployed on the dates named, May 10 and 11, Steel Bridgemen P. Gary and P. O'Dell, both junior to the claimants, were employed.

The time lost by the claimants on the dates referred to was eight (8) hours each on May 10 and four (4) hours each on May 11.

Protest was made by the claimants that because of their seniority they should have been assigned to the work at the tie plant. The Carrier has denied their claim.

The Agreement between the parties to this dispute dated July 1, 1945 and its subsequent memorandums and interpretations is here by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: We attach as Employes Exhibit "A" the Seniority Roster for the System Steel Bridge Gang—dated January 1, 1948.

sions to July 1, 1945. For convenience and ready reference a copy of that Memorandum of Agreement is attached, marked Carrier's Exhibit "C". That agreement is a revision of a similar agreement dated June 25, 1943, effective July 1, 1943. Welders, as covered by that agreement, and as indicated in paragraph 5, 6, 8 and 9 thereof, are used for rail and frog welding only. They have never been used and are not qualified to perform steel bridge or structural steel work. If that agreement did cover the work at the tie plant as Petitioner contends, Wolfe and Dement certainly would have no claim. This is apparently recognized by the Petitioner in submitting claims for Wolfe and Dement to the Third Division on basis employes junior in service to them in system steel bridge gang were used.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: Commencing April 29, 1948, and continuing to June 2, 1948, P. C. Gary and Pierce O'Dell performed some structural steel welding on the power plant roof at the tie plant in Denison, Texas. Claimants J. E. Wolfe and J. L. Dement claim they should have been given the work on May 10 and 11, 1948.

It appears that all four of the employes were members of a System Steel Bridge Gang working on the Red River bridge five miles north of Denison. Due to inclement weather the bridge gang was idle on May 10, 1948 and the forenoon of May 11, 1948. Employes Gary and O'Dell were used on these dates on the work in question although they were junior in seniority to the Claimants.

The position of Claimants is the correct one. Seniority applies to all positions, whether it be a regular bulletined position, a temporary position or one that is required to be performed only with overtime work. Awards 2716, 4200.

The Carrier urges that the claim must fail because there were employes available who were senior to Claimants. It has been determined many times by this Division that any employe entitled to the work senior to the one performing the work is entitled to make a claim. The Carrier, however, will be required to pay only one claimant. Award 1605.

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 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

The Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1949.