

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 assigning to overtime work in the Steel Bridge Gang at Clifton City, Missouri, an employe junior to Steel Bridge Mechanic H. C. Witt, on the following dates: October 14 to October 22 inclusive, and November 10, 1947;

(2) That Steel Bridge Mechanic H. C. Witt be reimbursed for one hour's pay at time and one-half for each day upon which this violation of the agreement occurred.

EMPLOYEES' STATEMENT OF FACTS: The Steel Bridge System Gang was during October and November, 1947 making certain repairs to Bridge Number 214.2 at Clifton City, Missouri. During the progress of the work it was necessary to utilize crane Number 1209.

During the period of October 14 to October 23, 1947 inclusive and again on November 10, 1947, the Carrier assigned Steel Bridge Mechanic J. G. Wills to operate this crane, and further assigned Mr Wills to report one hour in advance of the regular starting time in order to prepare the crane for use that day.

Steel Bridge Mechanic H. C. Witt is senior to J. G. Wills. Mr. Witt is a qualified operator of this crane but was not so assigned by the Carrier.

Mr. H. C. Witt protested the assignment to overtime work to a junior employe, and has made claim that he should have been assigned to the overtime worked by Mr. Wills. The Carrier has denied his claim.

Agreement dated February 1, 1928, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: We attach as Employees Exhibit "A" the Roster for the System Steel Bridge Gang dated January 1, 1948 (the 1947 roster was identical in so far as the rank and dates of Witt and Wills are concerned).

It will be noted that Mr. H. C. Witt is shown in rank Number 1 as Steel Bridgeman with a seniority date of July 7, 1925. Mr. J. G. Wills is shown in rank Number 3 with a seniority date of March 2, 1934.

Mr. Witt having relinquished the work of operating the steel bridge gang crane by not complying with instructions of the Foreman in performing that work and leaving his post of duty and returning to other work in the gang on July 18, 1944, waived and forfeited any and all rights to that work, both regular and overtime. That is apparently recognized by the Claimant and the Petitioner, as no claim or contention has been made that Mr. Witt should operate this crane during regular working hours of the gang; claims for overtime worked by Mr. B. P. Hunt, who has operated this crane regularly since July 18, 1944, in May 1947 and July 31 to September 2, 1947, inclusive, were not appealed; and claims for overtime worked in October and November 1947 by Relief Operator, Mr. J. G. Wills, are for the overtime involved preparing crane for service in advance of regular working hours only. As previously stated, this work has always been performed by the crane operator, regular or relief, and has not been divided so that one employe will operate the crane during regular working hours and another will perform all overtime work as claimed in this instance. Such an arrangement, as any experienced maintenance man knows, is impracticable and would be unsatisfactory. It is also contrary to awards of the Adjustment Board that any overtime work on any particular job belongs to the incumbent of that position and not to some other employe regardless of seniority.

Attached for information and ready reference of the Board is copy of seniority roster for System Steel Bridge gang, as of January 1, 1947, marked Carrier's Exhibit "C".

The attention of the Division is invited to the fact that Petitioner in his notice of November 1, 1948, to the Secretary of the Third Division refers in his Statement of Claim, to overtime worked October 14 to 22, inclusive, and November 10, 1947. It will be observed from Carrier's Exhibit "A", attached, claims presented and handled with Carrier on the property are for October 14, 15, 16, 17, 18 and 20 and November 10, 1947. No claims have been received by and handled with the Carrier as required by Section 3 (i) of the amended Railway Labor Act for October 19, 21 and 22, 1947. October 19, 1947 was Sunday and neither the gang nor the operator of the crane in that gang worked on that date. October 21 and 22, 1947, Mr. B. P. Hunt, regular operator of the crane, performed that service. Claims for these dates are also barred by Rule 2, Article 23 of current agreement between the parties, effective February 1, 1928 with revisions to July 1, 1945, reading as follows:

"Rule 2. Claims of employes which may arise under this agreement shall not be subject to monetary recovery unless presented within sixty days from the date of events or circumstances on which the claim is based."

Claim for October 19, 21 and 22, 1947, should therefore be dismissed.

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: The Steel Bridge System Gang, here involved, was engaged in repairing a bridge near Clifton, Missouri, in October and November, 1947. In performing such work, the use of a crane was required. The operation of the crane was work of a steel bridge mechanic and was not a separate assigned position. On the dates on which claim is made, October 14, 15, 16, 17, 18 and 20, and November 10, 1947, the work of operating the crane was given to Steel Bridge Mechanic Wills, together with a further direction to report one hour in advance of the regular starting time to prepare the crane for use. Steel Bridge Mechanic Witt claims that he should have been assigned this overtime work, he being senior to Wills. It is not questioned that for all practical purposes, the overtime here involved should be performed by the crane operator. The question is whether the senior steel bridge mechanic should have been given the work, including the overtime.

We think the senior qualified employe is entitled to the work. The operation of the crane was general steel bridge mechanic's work which could properly be performed by any member of the gang as directed by the foreman. When, however, there was steel bridge mechanic's work to be done on an overtime basis, the senior employe among the steel bridge mechanics is entitled to the overtime work even if efficiency demands that the regular crane operator's work be included. This conclusion is supported by Awards 2994, 2716, 4200.

The Claimant is therefore entitled to the work lost because of the failure of the Carrier to give the overtime work to the senior employe qualified to perform the work. The wage loss to Claimant is the pro rata rate of the position for the number of hours lost because of the Agreement violation.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute 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

That the Agreement was violated.

AWARD

Claim sustained at the pro rata rate for October 14, 15, 16, 17, 18 and 20, and November 10, 1947.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

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