

Award No. 4486

Docket No. MW-4446

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Adolph E. Wenke, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**CHICAGO GREAT WESTERN RAILWAY COMPANY**

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

(1) That the Carrier improperly compensated Section Laborer Jim Merkuris, Council Bluffs, Iowa, for services performed by him while temporarily assigned to the position of Crossing Flagman during the period from July 3 to July 12, 1947;

(2) That the claimant should have been compensated at his regular Section Laborer's rate and at the time and one-half rate for all work performed outside his regularly assigned hours of service;

(3) That the claimant be now reimbursed for all monetary loss suffered by him because of the Carrier's improper action.

**EMPLOYEES' STATEMENT OF FACTS:** Crossing gateman Carberry went on vacation from July 1 to July 12, 1947, inclusive. On July 3, 1947 Jim Merkuris, regularly assigned as section laborer on Section D—26, Council Bluffs, Iowa, was taken from his regular assignment and temporarily placed on the position of Crossing Watchman—substituting for Mr. Carberry on vacation.

The hours of service for Merkuris while so assigned were from 3:00 P. M. to 12:00 midnight. His hours of service while on his regular assignment as section laborer were from 8:00 A. M. to 5:00 P. M., one hour lunch period.

Section Laborer Merkuris continued on this assignment until July 12th when he was instructed to return to his regular position as section laborer.

During the period that Mr. Merkuris was assigned as crossing watchman he was paid the crossing watchman's rate of pay and at the pro rata rate. The crossing watchman's rate is less than that of a section laborer.

The Agreement in effect between the parties to this dispute dated April 15, 1940, and its subsequent memorandums and interpretations are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** Rule 36—Composite Service—states as follows:

"An employe required to perform more than one class of work during his day's assignment will be allowed the rate applicable to

and "E") by former General Chairman R. L. Brodie who negotiated and signed the current Working Agreement for the Brotherhood of Maintenance of Way Employees. The evidence is replete that Rules 23, 24, 26 and 36 (relied upon by the Petitioner) are not applicable under the circumstances of this case, in view of which there is no valid basis for claim.

Exhibits "A" to "E", inclusive, are attached hereto and made a part hereof as though fully set forth herein.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The System Committee of the Brotherhood contends that the Carrier improperly compensated Claimant, section laborer Jim Merkuris, for services performed by him while temporarily assigned as Crossing Flagman during the period from July 3, 1947 to July 12, 1947, inclusive. It asks that he be compensated at the pay of his regular position as section laborer and, in addition thereto, at time and one-half for all work performed outside his regularly assigned hours of service.

On July 1, 1947 the regular occupant of a crossing watchman's position at Council Bluffs, Iowa, took his vacation for the period from July 1, 1947 to July 12, 1947, inclusive. This position was monthly rated and worked seven days a week from 3:00 P. M. to Midnight, the salary paid taking into consideration the daily overtime of one hour by reason of the nine hour a day assignment. The Carrier assigned T. D. Thomas, an employee having no seniority in the Track Department, to fill the vacancy.

On July 1, 1947, Claimant, section laborer Jim Merkuris, was regularly assigned on Section D-26 at Council Bluffs, Iowa, six days per week, with hours from 8:00 A. M. to 5:00 P. M., with one hour for lunch. He was at that time working near Manning, Iowa, repairing track that had been washed out. Claimant had seniority as a section laborer in the Track Department dated June 10, 1909, being in Group 1. While crossing watchmen are in Group 4, both positions are in the Track Department.

When Claimant returned from Manning, during the night of July 2-3, he learned of the arrangement. Although no vacancy actually existed on the crossing watchman's position, because Thomas had been assigned thereto, Claimant, having previously been advised of his rights, made inquiry of the foreman in regard thereto. Upon being asked by the foreman if he wanted it, he replied that he did. He was thereupon assigned thereto. He filled the position from July 3 to July 12, 1947, inclusive, and was paid therefor at the regular rate of the position. Claimant requested and, when given the opportunity, voluntarily elected to fill the temporary vacancy.

All rules referred to herein will relate to the parties' effective Agreement. Under Rule 6 (a) Claimant, being qualified in Group 1 in the Track Department under Rule 4, was eligible to fill this position while it was temporarily vacant and, if so used, would retain his seniority rights in the Group from which taken. See also Rule 14. Under Rule 9 (c) the Carrier was not obligated to bulletin the temporary vacancy except that it was required to consider seniority rights in filling it. See Rules 3, 6 (d) and 9 (h). Claimant requested to fill the temporary vacancy, for which he was qualified and eligible, and when it was offered to him he voluntarily elected to accept it. In so doing he was within his rights but he thereby accepted the working conditions and rates of pay thereof. In view of that fact we find the claim to be without merit.

**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 Employee involved in this dispute are respectively carrier and employee 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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1949.