

Award No. 4487

Docket No. MW-4456

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

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

(1) That the Carrier improperly paid Section Laborers R. M. Fowler, R. K. Bowles, and J. T. Chadwick of Heavener, Oklahoma, while they were assigned to the work of repairing the track scale at Heavener on June 23 and 24, 1947:

(2) That the claimants be reimbursed for the difference between the compensation they received at Section Laborer's rate and what they should have received at the Assistant Scale Inspector's rate of pay on the dates named in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. R. M. Fowler, R. K. Bowles, and James T. Chadwick on June 23 and 24, 1947, were regularly assigned section laborers in Section Crew No. 28 at Heavener, Oklahoma.

They were assigned on these two referred to dates to work with and assist the Scale Inspector in making repairs to the track scales at Heavener, Oklahoma.

The work consisted of opening up the scale and removing large main lever under the supervision of scale inspector.

The employes contend they were working on a higher rated position and are thus entitled to the Assistant Scale Inspector's rate of pay. The Carrier has denied the claim.

Agreement dated January 1, 1947 between the parties to the dispute, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** The Carrier has taken the position that this claim is not valid and is claiming that Rule 13-4 has operated as to close the case.

Under date of February 7, 1948, General Chairman Geo. Sudderth wrote the Carriers' Vice President, J. M. Prickett outlining the claim. He received the following reply:

"February 12, 1948

Mr. Geo. Sudderth, General Chairman,  
Brotherhood of Maintenance of Way Employes,  
315 South 7th Street,  
Muskogee, Oklahoma.

Dear Sir:

I have your letter of February 7, 1948, concerning claim of R. M. Fowler, R. K. Boles and J. T. Chadwick, Heavener, for difference

The Carrier has not accepted our offer to join with us in joint submission."

Organization has therefore completely ignored the provisions of Rule 13-4 of the agreement. That rule states that appeals must be made within six (6) months, or the case will be considered as closed." Organization did not comply with this requirement. Certainly Organization has no right to ask the Board to consider the claim on its merits when it failed to discuss with Carrier the effect on the Claim of Rule 13-4. The clear language contained in Rule 13-4 cannot be disregarded either by the Organization or the Board. It is conclusive as to this claim, and the claim actually no longer exists.

Our position is to the application of Rule 13-4 to this claim and all data submitted herewith have been made known to the Organization.

Because of the conclusive language contained in Rule 13-4 we do not see any necessity for any hearing.

The claim, not being properly before the Board, should be dismissed.

**OPINION OF BOARD:** The System Committee of the Brotherhood makes this claim in behalf of three named section laborers of Heavener, Oklahoma, on the ground that on June 23 and 24, 1947 they were assigned to and performed the work of repairing the track scales at Heavener but were paid for such services at section laborer's rate instead of Assistant Scale Inspector's rate, which it claims they should have received. It asks that the claim for such difference be allowed Claimants.

Carrier contends that under Rule 13-4 of the parties' effective Agreement the appeal was not taken within time.

Rule 13-4 is as follows:

"Any appeals from the decision of the highest officer designated by the Company to handle cases on appeal must be made within six (6) months, or the case will be considered as closed."

We find that the General Chairman's letter of September 16, 1948 to J. M. Prickett, Vice President of the Carrier, made within the time as required by Rule 13-4, advising him that if the decision he made in his letter of April 5, 1948 declining the claim was final the matter would have to be taken to the Third Division of the National Railroad Adjustment Board for adjudication and asking him if he cared to join in a Joint Statement of Facts, together with the subsequent filing of the appeal here, meets all the requirements of this rule.

As to the merits, Rule 27 of the parties' effective Agreement, as far as here material, provides:

"An employe temporarily assigned by proper authority to a position paying a higher rate than the position to which he is regularly assigned for four (4) continuous hours or more in one day will be allowed the higher rate for the entire day."

The Claimants, R. M. Fowler, R. K. Bowles and James F. Chadwick, were regularly assigned section laborers in Section Crew No. 28 at Heavener, Oklahoma. On June 23 and 24, 1947 they were assigned to work with and did, on those dates, assist the Scale Inspector in making repairs to the track scales at Heavener. Under Rule 27 they are entitled to be paid accordingly and the claim is properly made.

**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 Carrier violated the Agreement.

AWARD

Claim sustained.

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.