

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) That the Carrier violated the provisions of the effective agreement by not compensating certain B&B Painters at the B&B Foreman's rate of pay while they were performing the duties of a Foreman during the painting season of 1947;

(2) That Painter Joseph E. Schwartz and others be allowed the difference in pay between what they did receive at Painter's rate, and what they should have received at B&B Foreman's rate of pay during the period referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Under the date of April 26, 1947 the Carrier advertised in its Bulletin No. 1, two (2) positions of painters—qualified to paint roadway signs, including the letter of same and to be further qualified to operate a motor car. This Bulletin No. 1, referred to positions on the Dubuque & Illinois Division. We attach as Employees' Exhibit "A" a photostat copy of this Bulletin No. 1.

Under date of May 9, 1947 the Carrier issued its Bulletin No. 2 notifying all concerned that Joseph E. Schwartz and S. J. Kampas had been assigned the positions advertised in Bulletin No. 1. Photostat copy of this Bulletin No. 2 is attached as Employees' Exhibit "B."

At approximately this same time that these referred to Bulletins were issued by the Carrier for two positions on the Dubuque & Illinois Division, the Carrier also advertised similar positions on its Milwaukee, Idaho, Illinois & Dubuque, Terre Haute and Iowa and Southern Minnesota Divisions.

These positions were similarly awarded to certain other employees.

Painters Schwartz and Kampas commenced their assignment in May of 1947 and continued on through to October of that year. They used a motor car in traveling from place to place painting all signs, mile posts and similar markers along the right of way.

For their services they were both paid at the painter's rate.

Schwartz operated the car, made out the necessary reports and time rolls and receive the necessary correspondence between this unit and the

Surely the Board Members will agree that there is no comparison between the duties and responsibilities of a Bridge & Building Foreman and the duties and responsibilities of the Claimant as a sign painter. It must necessarily follow, therefore, that the claim for Bridge & Building Foreman's rate of pay is entirely without merit.

In conclusion the Carrier maintains that the claim herein is not properly before or subject to a decision by the Board because it has not been handled in the usual manner as provided in the Railway Labor Act. Furthermore, the claim has not been handled in accordance with Maintenance of Way Schedule Rule 46.

However, in the event the Board does decide to accept jurisdiction in this dispute the Carrier respectfully requests that the claim be denied for lack of merit.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood contends that the Carrier violated the provisions of their effective Agreement when it failed to compensate B&B painters at B&B foreman's rate of pay while, during the painting season of 1947, they were performing the duties of a foreman. Painter Joseph E. Schwartz, and all other painters similarly situated, having been paid at the painter's rate of pay, it asks that they be allowed the difference in pay, during this period, of these two rated positions.

Carrier's primary contention is that the claim was not handled on the property in accordance with Section 3, First (i) of The Railway Labor Act, and Rule 46 of the parties' effective Agreement.

Section 3, First (i) is as follows:

"The disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Rule 46 is as follows:

"TIME LIMIT—GRIEVANCES.

Grievances involving money payment accruing under the terms of this agreement will not be applied prior to ninety (90) days from the date of presentation to the Superintendent.

Grievances not involving money payment emanating under the terms of this agreement will be presented to the Superintendent not later than ninety (90) days from date of origin."

Section 3 First (i) of The Railway Labor Act requires that disputes be handled on the property in the usual manner, which includes the procedural requirements of the provisions of the parties' effective agreement relating thereto, up to and including the chief operating officer of the carrier designated to handle such disputes, from whose decision an appeal may be taken to this Board. But this does not prevent the carrier from waiving such procedural requirements provided the appeal is taken from a final decision of the chief operating officer as therein required.

Here the original claim that the rules of the parties' Agreement were being violated by the Carrier on its several Divisions by the nature of the work, required to be performed by the men assigned thereto under these

bulletins, in view of the rate of pay designated to be paid therefor, was made on May 12, 1947 and, in the same communication, request was made for increased compensation because thereof. This claim was made within the time required under Rule 46, after the work had been bulletined and assigned. It was not made to the Superintendent, as provided in Rule 46, but to F. H. Allard, Assistant to the Vice President and Chief Operating Officer of the Carrier designated to handle such disputes. However, no objection was made by the Carrier of that fact until long after the time within which to file claims under Rule 46 had passed. As already stated, the procedural requirements of these rules can be waived and, under the situation as here presented, we find that the Carrier did so and cannot now complain of the Brotherhood's failure to comply therewith. The claim having been appealed from a final decision of the Chief Operating Officer of the Carrier designated to handle such disputes, it is here for our consideration.

The Carrier further objects to the form of the claim in that it is in behalf of Joseph E. Schwartz "and others" and asks who the "others" are, contending that they should be named.

The record discloses that the claim, as originally made, covered the several divisions of the Carrier where positions were bulletined for painters to paint roadway signs. Subsequently it was amended to name Joseph E. Schwartz for the Dubuque Illinois Division "and others" for the other divisions where similar positions were involved under the original claim made. That a claim can be made in behalf of one and for all others who are similarly situated, in order to avoid a multiplicity of claims and dockets, has often been decided by this Division and, properly so. If grievances arise out of the same or similar situations, and the Carrier is advised thereof by a claim being made, it would serve no useful purpose to multiply such claims for all employees who might be affected thereby. If it is established that the complaint is justified then it can be determined who, if any, have been adversely affected thereby but, on the other hand, if the complaint is not justified then no one has been adversely affected but, in neither event is any useful purpose served by filing a multitude of claims in behalf of all those individuals who might be adversely affected thereby depending upon the extent to which the complaint is sustained, if at all. We find the claim to be in proper form.

On the merits the following rules of the parties' Agreement are applicable.

Rule 45 (a):

"An employe who, in addition to his other duties, directs the work of men and reports to officials of the Railroad will be designated as a foreman."

Rule 32, in part, as follows:

"An employe required to fill the position of another employe receiving a higher rate of pay, shall be paid the rate of such position for the work day when the time so engaged is in excess of four (4) hours."

Considering the requirements of the bulletins on the several Divisions of the Carrier, by which these two men crews of roadway sign painters were created, the work they were to perform, the manner therein provided for its performance and the evidence of how it was actually handled on the Dubuque-Illinois Division, where Schwartz was one of the crew, we find that one member of each crew on the several Divisions, during the entire time the work was being performed, performed work as a foreman to bring him within the provisions of Rule 45 (a) and should be compensated accordingly.

The record establishes that Schwartz is entitled to this additional compensation on the Dubuque-Illinois Division as he performed most of this

work and was so considered in charge by the Carrier, as shown by its communication to him. As to the other Divisions, where such crews were organized, the record is not sufficient to determine who was in charge as foreman.

In view of the foregoing, we find that the Carrier violated the Agreement by not paying one member of each roadway sign painting crew organized on its several Divisions, where such crews were organized, at Foreman's rate of pay and direct that it do so. However, other than on the Dubuque-Illinois Division, we return the claim to the property to determine who acted as foreman of the different crews and entitled to the additional pay because thereof.

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 the Carrier violated the Agreement.

AWARD

Claim sustained that Carrier violated its Agreement by not paying one member of each of its Roadway Sign Painting crews at Foreman's rate of pay; also sustained as to the claim of Joseph E. Schwartz for additional pay between what he received as painter and what he should have received as foreman; returned to the property for additional evidence to determine who, on each of the other Roadway Sign painting crews created on the several other Divisions, acted as foreman and entitled to such additional pay.

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.