

Award No. 4799

Docket No. MW-4744

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO GREAT WESTERN RAILWAY COMPANY**

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

(1) That the Carrier has violated the agreement by not compensating the Section Foremen at Minden, Coulter, and Bristow, Iowa for the additional duties and responsibilities placed upon them by requiring them to perform the duties of a Water Pumper;

(2) That Section Foremen H. W. Wilcox, A. H. Aschbrunner, and Fred Truex be compensated in accordance with the agreement, and retroactively since April 26, 1948.

EMPLOYEES' STATEMENT OF FACTS: Rule 4 of the effective agreement lists the different sub-departments in which employees seniority rights are confined.

Section Foremen are listed in Group (1-a) of the Track Department.

Pumpers are listed in Group (6-c) of the Bridge and Building Department.

The Section Foremen at Minden, Coulter, and Bristow, Iowa have been assigned to and are responsible for the pumping of the locomotive water supply. They are also responsible for and required to add the proper amount of chemical to the locomotive water supply. During severe weather they are also required to keep a fire burning in the stoves in the pump house.

The Section Foremen at the above referred to locations have been instructed by the Carrier to perform these services during their regular tour of duty. In addition, the Section Foremen at these locations are required to make out and submit various reports and forms in regard to their duties as pumper.

These reports and forms are, of necessity, made out at home after the expiration of the Foreman's assigned tour of duty because there are no facilities at their headquarters, such as heat, lights, desks, or places to keep or make out the reports or forms.

The reports or forms required of Section Foremen who perform pumper duty include a weekly chemical report, which is submitted to the General Storekeeper as to the amount of chemical used and on hand at the end of each week.

A monthly report to Division Engineer and General Storekeeper as to the amount of water treated, amount of water pumped, number of balls and lbs.

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: Claimants, Section Foremen, have been required to tend to water pumping stations and to make out certain reports concerning the number of gallons of water pumped, the treatment given thereto and the supplies used. The Employees assert that these reports must, of necessity, be made out at home after the regular tour of duty. Carrier asserts that the claimants have instructions to perform all duties incidental to maintaining water supply during their regular tour of duty.

The Employees contend that the Section Foremen are actually required to perform the work of a pumper in servicing these stations and are, therefore, entitled to a call under the Call Rule each day they are required to do this work. The contention is apparently based upon the requirements of Rule 28 which provides that employees will not be required to suspend work during any assigned period for the purpose of absorbing overtime.

The assignment of such work as is required in the conduct of its business is a matter within the discretion of the Carrier except to the extent that it has limited that discretion by Agreement with its employees. Thus, for example, work properly within the scope of a collective bargaining Agreement may not with impunity be assigned to employees outside the Agreement. In the instant docket, the record reveals that telegraphers on this property when required to attend pumping stations are, by Agreement, paid additional compensation. The record further reveals that at other points on this property, Carrier has followed a practice of paying Section Foremen an additional \$15.00 per month to service pumps which are operated by gasoline engines. Carrier states the reason for such payment is that work in connection with such pumps is necessarily performed outside the regular hours. The duties of a Section Foreman are not defined anywhere in the Agreement, nor are they defined in bulletins advertising such positions for bids. Thus it is within the Carrier's discretion to assign such duties to the position as it sees fit, provided that such assignment is not violative of the Agreement with its employees. Of course, in assigning additional duties or responsibilities to positions, it may be that other provisions of the Agreement may require changes in rate. The assignment of the instant work to Section Foremen has been in effect for at least ten years and prior to the consummation of the effective bargaining Agreement, without previous complaint from the Employees. In the absence of a rule which either by unmistakable language or necessary implication prohibits such assignment, that is cogent evidence of the propriety thereof. We find no such rule in the Agreement. Accordingly, it follows that this work is properly a part of the regular assignment of claimants. That being so, there is no violation of Rule 28 in this practice.

It appears from the record that whenever it was necessary to perform work in connection with the servicing of these stations outside regular hours, the Carrier has properly paid for all duly authenticated overtime. It may be that some of the claimants have filled in some of the reports required in the servicing of the stations at home. However, the Carrier did not require the performance of said work at home. The type of clerical work involved in making the same, as can be seen from an examination of the exhibits appearing in the record, is of such a minor nature that it could have been performed on the job despite the lack of the usual office facilities.

It follows from what we have said above that a denial award is in order.

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 Carrier did not violate 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 28th day of March, 1950.