

Award No. 4850
Docket No. MW-4804

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC RAILROAD COMPANY
(Guy A. Thompson, Trustee)**

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

(1) That the Carrier violated the agreement by not compensating Extra Gang Laborers C. F. Howell, Jose Zamora and Louis Colletti, Gang No. 2, Pueblo, Colorado, for the overtime worked in excess of their eight hours during the period from October 9 to December 14, 1946, inclusive;

(2) That claimants, C. F. Howell, Jose Zamora and Louis Colletti be reimbursed for one hour per day at time and one-half rates for each day on which they performed nine hours work during the period referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: During the period October 9, 1946, through December 14, 1946, C. F. Howell was Foreman of Extra Gang No. 2 at Pueblo, Colorado. Extra Gang Laborers Louis Colletti and Jose Zamora were members of this Extra Gang No. 2.

Foreman Howell and these two members of his Crew commenced work at 6:45 a.m. at Pueblo. They were transported to Boone where they worked approximately 8 hours. They were then brought back to Pueblo and released at 4:45 p.m. These referred to employees worked a total of 9 hours per day during this period referred to. However, they were only paid for 8 hours of service on each of these referred to dates. Specifically, C. F. Howell worked 9 hours per day on the following dates:

In October of 1946: 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31

In November of 1946: 1, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 23, 26, 27, 29, 30

And in December of 1946: 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13 and 14. Extra Gang Laborer Louis Colletti worked exactly the same dates, 9 hours per day as did his Foreman C. F. Howell, with the addition of November 20, 1946, on which day Colletti also worked 9 hours per day.

And, Extra Gang Laborer Jose Zamora worked the following dates, 9 hours per day.

In October of 1946: 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 25, 26, 28, 29, 30, 31

Due to the rules of the organization that a claim presented by the organization cannot thereafter be withdrawn by the employee or employees in whose behalf the claim was submitted, Mr. Rambo wrote Foreman Howell to that effect and continued to request submission of the alleged overtime slips. Every reasonable effort was made to secure these time slips as evidenced by the correspondence quoted in Carrier's Statement of Facts, all to no avail.

The Carrier finally went to the extreme to assist the organization in having this claim progressed. On November 12, 1948, Foreman Howell and Laborer Colletti were brought in for investigation in an effort to get the facts. Laborer Zamora had, in the meantime, left the service and his whereabouts were unknown to the Carrier. The transcript of the investigation is attached as Carrier's Exhibit "A". There Mr. C. F. Howell testified, and we quote:

"This time claim was started by Mr. C. A. Nielson, Secretary and Treasurer of Lodge 1517, MofW Employees, at Pueblo, who talked to me and members of my gang on numerous occasions and Mr. Nielson became very insistent that we submit these time claims which we finally did. However, after we submitted these time claims at the request of Mr. Nielson we studied the matter over and although it is a fact that on some mornings we probably did leave Pueblo before our regular starting time. On the other hand we arrived back at Pueblo before our regular stopping time on just about as many dates as we left Pueblo before our starting time. Therefore, we felt that we had been paid for all services rendered and we attempted to withdraw this time claim and the organization would not permit us to do so."

He also testified that no pressure had been brought to bear on him by Division Engineer Rambo or any other officer of the railroad to induce him to write the two letters withdrawing this claim, as alleged by the General Chairman. His reasons for withdrawing the claim are set out in the above quote from his testimony.

It should be amply clear to your board that these three men have been ill treated by the organization by having pressure put on them in the first instance, to agree to submit such a claim and, in the second instance, by not withdrawing the claim submitted after the men had reconsidered and decided the claim was not well based on facts and that it would be morally wrong and an injustice to the Carrier to try to progress a false claim to your board.

There is no evidence of a violation by the Carrier of any of the rules of the working agreement and this claim is, therefore, without merit and should, in justice to the Carrier and Foreman Howell and Laborers Zamora and Colletti be denied.

(Exhibit not reproduced.)

OPINION OF BOARD: Claimants are the foreman and two extra gang employees of Extra Gang No. 2 with headquarters at Pueblo, Colorado. On the days mentioned in the claim, they were transported to and from work, their work location being 21 miles east of Pueblo. Their assigned hours were 8:00 A.M. to 5:00 P.M. with a lunch period of one hour. The claim is for time used in riding to and from the location of the work before and after their assigned hours.

Time spent in traveling between the assigned headquarters and the location of the work is time for which an employee is entitled to payment and if done before or after assigned hours, it is overtime work. No issue is raised on this point.

The dispute arises out of the following statement of facts: Claimant Howell, the extra gang foreman, in making his time reports did not indicate that any overtime had been worked. The claim appears to have been instigated by the Secretary of the local union. Under date of December 12, 1946, the General Chairman was authorized by these three claimants to process their claims for one hour overtime per day on the days specified. Upon receipt

of the claims, the Carrier attempted unsuccessfully to obtain time slips covering this overtime from the foreman. The record shows that each of these claimants decided to withdraw their claims for the reason that they felt they had been fully compensated for the work they performed. Irrespective of the wishes of claimants, the Organization persisted in processing the claim as it had a right to do. Award 4461.

As to claimant Howell, the extra gang foreman, the claim is not valid for the reason that the working of overtime was unauthorized as to him as required by Rule 22, current agreement. As to the two extra gang employes, Zamora and Colletti, they are entitled to pay at the overtime rate for time spent before and after their assigned hours in traveling between their headquarters and the location of the work. The foreman could properly authorize such overtime on behalf of the Carrier.

The amount of overtime worked is not established by the record. The claim is for one hour per day on specified days. The claimants subsequently disavowed the claim. On the other hand it is shown that on some days, varied amounts of overtime were worked by Zamora and Colletti. We remand this portion of the claim for a joint check of the overtime worked by these two employes. They are entitled to be compensated at time and one-half rate for any overtime they have worked within the scope of the claim made.

Claim (1) will be sustained as to Claimant's Zamora and Calletti. Claim (2) remanded for a joint check on the property to determine the amount of overtime worked by Claimants Zamora and Colletti.

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 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 to the extent set forth in the Opinion.

AWARD

Claim (1) sustained, except as to Claimant Howell. Claim (2) remanded as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1950.