

Award No. 4878

Docket No. MW-4916

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
NORTHERN PACIFIC RAILWAY COMPANY**

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

- (1) That the Carrier violated the effective Agreement when they assigned Coal Dock employees at Trout Creek, Montana, to perform engine watchman's duties in addition to their regular duties and refused to compensate them for such additional service:
- (2) That Coal Dock Laborers Albert Gerstenberger, C. M. Shade, G. B. Casteel, C. M. Belden, Fred Elliott and Herbert Lacy, Trout Creek, Montana, be paid additional compensation at the engine watchman's straight time rate for the time they were required to perform engine watchman's duties during the period May 13 to October 9, 1948, both dates inclusive.

EMPLOYEES' STATEMENT OF FACTS: The Carrier operates a coal dock at Trout Creek, Montana, and at the time this instant claim arose, seven of the Carrier's employees were used for the operation of this coal dock.

During the period from May 18 to October 9, 1948, inclusive, the Carrier had occasion to tie up engines at this point. The tying up of these engines was a temporary arrangement since these engines were used in the work train and were only tied up at this point because it was more convenient and closer to the location of the work being performed.

On or about May 18, 1948 the Carrier issued instructions to the coal dock employees advising them that they would be required in addition to performing their regular duties of operating this coal dock, to watch and take care of engines temporarily tied up nearby.

These employees were the regularly assigned coal dock employees at this point during the period involved in this claim. They worked on a rotating shift basis and consequently each of these 6 claimants on various dates were required to perform this additional work of watching engines. We attach as Employees' Exhibit "A" a list specifying the time and dates and showing the various shifts of the claimants, together with the amounts they should have been paid had the Carrier properly compensated them for the additional service they were required to perform.

The engines were tied up at a point approximately 250 feet from the coal dock. During the times noted in our attached Exhibit "A," these employees

This claim should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The principal facts in this case are not in dispute and will not be repeated. The essential question is whether the Company had a right to assign Coal Dock employes to perform Engine Watchmen duties without additional compensation for such work.

The determination of that question rests upon the interpretation of the Agreement of January 31, 1944. That Agreement allocated jurisdiction between the Firemen and Oilers Organization and the Maintenance of Way Organization over Coal Docks formerly operated by a contractor.

The claimants are employed at a Coal Dock, placed under the jurisdiction of and covered by the Maintenance of Way Organization Agreement dated on the same date as the Jurisdictional Agreement. The pertinent language of the Jurisdictional Agreement reads:

"It is understood and agreed that when service requirements necessitate, force at a particular dock may be assisted in the performance of necessary work in connection with such coal dock and related facilities by employes not covered by the agreement then applicable to that particular dock; that composite assignments may be made consisting of work covered by the Firemen and Oilers' Agreement and the Maintenance of Way Agreement; and that where composite assignments are not established, employes covered by the agreements with the Firemen and Oilers or the Maintenance of Way Organizations may temporarily perform work on a coal dock or related facility in order to meet service requirements; that when service herein referred to is performed, foundation will not be laid for time claims because of performing composite service and such claims will not be prosecuted."

It is the Organization's contention that the work of watching engines is covered by the Firemen and Oilers' Agreement. The Organization states that claimants should not be required to do work other than that of unloading coal, hoisting the coal into the docks and placing the coal on the tenders of engines.

It is agreed that the first clause of the above-quoted language does contemplate that employes under the Firemen and Oilers' Agreement may be called in to assist where additional help is needed in handling coal. The second clause, however, as a matter of a further condition provides that " * * * composite assignments may be made consisting of work covered by the Firemen and Oilers' Agreement and the Maintenance of Way Agreement * * * ". The Board cannot ignore this specific understanding. In this case a composite assignment was made consisting of engine watching under the Firemen and Oilers' Agreement and unloading, hoisting, and placing of coal, which at this Dock is under the Maintenance of Way Agreement. Any other finding would require a tortuous and unrealistic construction which would ignore a substantial provision of the Agreement.

The following language of the Agreement is a bar to the claim now presented:

" * * * when service herein referred to is performed, foundation will not be laid for time claims because of performing composite service and such claims will not be prosecuted."

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 not violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of June, 1950.