

Award No. 8035
Docket No. MW-7665

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it failed to call Section Foreman E. F. Richardson to perform overtime service on May 4, 1952, and on May 6, 1952, which was and is within the scope of his duties and responsibilities as a Section Foreman;

(2) Section Foreman E. F. Richardson be reimbursed for the exact amount of monetary loss suffered (two minimum calls) by the Carrier's failure to call and to use him for overtime service on May 4 and 6, 1952.

EMPLOYEES' STATEMENT OF FACTS: Mr. E. F. Richardson is a Yard Section Foreman in Glen Park Yard, Kansas City, Missouri, and he was working such assignment on, prior and subsequent to May 4, 1952.

On May 4, 1952, about 1:15 A. M., a C. B. & Q. transfer train backed through the south switch of Number 9 cross-over at the North-end of Glen Park Yard, thereby derailing the caboose of the train and impairing the tracks.

On May 6, 1952, following the regular assigned working hours for the Yard Section Crew, a derailment occurred on the rip track lead of the Glen Park Yard.

The Carrier failed to call Yard Section Foreman Richardson to make necessary repairs and/or inspection of the tracks on either of the above mentioned dates. Claim for a minimum call (2 hours and 40 minutes at the overtime rate) upon each of the foregoing dates was filed in behalf of Yard Section Foreman Richardson. The Carrier has declined the claim.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Positions of track foremen, which include Yard Section Foremen, are embraced within the scope of the Agreement between the parties hereto under the provisions of the Scope Rule reading as follows:

The claim is for penalty rate for work not done. Under Awards of the Board no more than straight time is to be claimed or allowed for work not actually performed.

All data submitted in support of Carrier's position have been heretofore submitted to the employees or their duly authorized representatives.

The Carrier requests ample time and opportunity to reply to any and all allegations contained in the Brotherhood of Maintenance of Way Employees' System Committee's and Employees' submission and all pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company expressly denies each and every, all and singular the allegations of the Brotherhood of Maintenance of Way Employees, System Committee of the Brotherhood, and Employees.

For each and all of the foregoing reasons, the Railroad Company respectfully requests the Third Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Company such other relief to which it may be entitled.

(Exhibits not reproduced).

OPINION OF BOARD: Petitioner asserts in this case that Section Foreman E. F. Richardson should have been called on May 4 and May 6, 1952 respectively to inspect and/or repair certain switches and tracks following an accident on each of those dates. In asserting this claim Petitioner relies upon the Scope Rule (Article 1), Article 11, Rule 1, and the Carrier's Operating Rule No. 56.

The Carrier takes the position that this claim is not properly before the Division, hence it should be dismissed for lack of jurisdiction. This challenge is made on the ground that the claim as filed with the Division is not the same claim as was handled on the property. Furthermore, it is asserted that it is also untimely because of the Petitioner's failure to handle with reasonable dispatch, and to appeal to this Division consistent with the requirements of Article V, Section 2 of the Agreement of August 21, 1954.

The record before us lends no support to this plea. Neither do recent Awards of the Division support the plea. Awards 7833, 7959, 7961 and 7962.

The record shows that on each of the dates in question the inspection and/or repair required were actually done by Claimant, during his regular hours of duty. In other words, he was not called immediately at the time of the accidents to report in and perform the inspection and/or repair. If the record revealed that other employees not entitled to the work made the inspections and/or repairs, we would have a different case. There is no such showing in the record. We fail to find any provisions in the rules which required the Carrier to call claimant immediately under the circumstances which existed. The Carrier had the right to determine in view of its operating needs and obligations whether the necessary inspections and/or repairs should be done immediately or delayed until claimant reported on his regular tour of duty. The Carrier chose to delay the work, and we fail to find any violation of rules or any action which was arbitrary or in bad faith. Under such circumstances the claim lacks merit.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 30th day of July, 1957.