

Award No. 8090

Docket No. MW-7638

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

1. The Carrier violated the Agreement when it compensated Section Laborers E. H. Smathers, P. E. Kennemer, Leonard Coffman, R. G. Martinez and P. E. Crawford at the Section Laborer's rate of pay instead of Electrician Helper's rate of pay for services rendered in assisting Electricians in digging, back-filling and setting High Light Poles on December 8 and 9, 1953.

2. E. H. Smathers, P. E. Kennemer, Leonard Coffman, R. G. Martinez and P. E. Crawford each be allowed the difference between what they received at the Section Laborer's rate and what they should have received at Electrician Helper's rate for services rendered on December 8, 1953 and a similar adjustment be made in the compensation allowed E. H. Smathers, P. E. Kennemer and Leonard Coffman for services rendered on December 9, 1953.

EMPLOYEES' STATEMENT OF FACTS: On December 8, 1953, Section Laborers E. H. Smathers, P. E. Kennemer, Leonard Coffman, R. G. Martinez and P. E. Crawford performed service in assisting Electricians in digging, back-filling and setting High Light Poles. Claimant Employees each performed five and one-half (5½) hours service in assisting the Electricians on December 8, 1953.

On December 9, 1953, Section Laborers E. H. Smathers, P. E. Kennemer and Leonard Coffman performed service in assisting the Electricians in digging, back-filling and setting High Light Poles to the extent of two (2) hours each.

It is the contention of the Employees that such service was subject to the provisions of Article 15, Rule 1, of the effective Agreement. Therefore, such service should have been compensated for at the Electrician Helper's rate of pay. However, for the service rendered, Claimant Section Laborers were compensated at Section Laborer's rate of pay.

OPINION OF BOARD: The basic facts in this case are identical, with but one exception, to those in Docket MW-7637, this day decided by Award 8089 of this Division.

The exception is with respect to part 2 of the instant claim, reading in part:

"* * * and a similar adjustment be made in the compensation allowed E. H. Smathers, P. E. Kennemer and Leonard Coffman for services rendered on December 9, 1953."

The parties are in agreement that the work here in question performed December 9, 1953 required two hours; it is quite obvious that 2 hours of work could not be said to be "preponderating for the day." Otherwise the parties to the dispute, their contentions and the rule at issue are the same as in Docket MW-7637, this day decided by Award 8089, and said Award now is held to be controlling in this docket.

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 (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1957.