

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**PORT TERMINAL RAILROAD ASSOCIATION**

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

"(1) The Carrier violated the effective Agreement when it called section laborers assigned to Section No. 3 to perform overtime services on Section No. 5 on May 26 and June 1, 1954, and failed to call Section Laborer Melvin Harris who was regularly assigned to Section No. 5;

(2) Section Laborer Melvin Harris be allowed pay for two calls because of the violation referred to in part (1) of this claim."

**EMPLOYEES' STATEMENT OF FACTS:** The claimant, Section Laborer Melvin Harris was regularly assigned as such on Section No. 5, with headquarters at Manchester, Texas, under the supervision of Section Foreman T. Z. Carmona.

The claimant resides at Manchester, Texas, within five city blocks of the designated assembling point of section No. 5, whereas Foreman Carmona resides at Pasadena, Texas, approximately five miles from the aforementioned assembling point.

On May 26, 1954, Foreman Carmona called one member of his crew and in addition two section laborers (including Section Laborer Ignacio Gallegos) who were regularly assigned to Section No. 3, and who resided at Pasadena, Texas, to perform overtime services in repairing a broken rail on the territory comprising Section No. 5. Section Laborer Gallegos commenced work at 10:00 P. M. on May 26, 1954 and was released therefrom at 12:30 A. M. on May 27, 1954. For this service, Section Laborer Gallegos was compensated for a call.

On June 1, 1954, Foreman Carmona called one member of his crew and Section Laborer Esequiel Calbillo, who was regularly assigned to Section No. 3 and who resides at Pasadena, Texas to perform overtime services in connection with the rerailing of a car on the territory comprising Section No. 5. Section Laborer Calbillo commenced work at 10:00 P. M. on June 1, 1954 and was released therefrom at 12:40 A. M. on June 2, 1954. For this service, Section Laborer Calbillo was compensated for a call.

**OPINION OF BOARD:** The Carrier, with commendable frankness, admits it "has generally followed the right of seniority in allocating emergency work to section laborers when it was practical to do so."

Carrier also admits that it was its practice "for its section foremen to secure laborers who were immediately available to take care of emergencies occurring after the established hours; where the employes have telephones or have arrangements to be called at a nearby telephone, (when) they are called for such emergency work." (Emphasis and parentheses supplied.)

It is admitted that claimant had made arrangements to be called at a nearby telephone. He says he was available on May 26th. Carrier admits it did not call him on that date.

We think claimant has made out his case for May the 26th and for that date this claim should be sustained.

As to the claim for June 1st we think he has failed. Copy of the Carrier's records on file show that claimant was on vacation. Foreman said he called the 'phone that claimant had arranged to be called at and the party that answered said "that Harris was not at home and his house was locked up." From this it is obvious that claimant was not available and the claim for June 1st must be denied.

To the extent the Carrier failed to call claimant on May 26th the Agreement was violated.

**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 Carrier violated the Agreement on May 26th.

#### AWARD

Claim sustained as to May 26th; denied as to June 1st.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1957.