

Award No. 9628

Docket No. MW-8064

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, 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 effective Agreement when it refused to compensate Section Laborers Jessie Noise and Frank Satterfield at the Bridge and Building helper's rate of pay for the time in which they were engaged in unloading Bridge and Building material on January 31, 1955;

(2) Section Laborers Jessie Noise and Frank Satterfield each be allowed the difference between what they received and what they should have been paid at the B&B helper's rate of pay for services as rendered in performing the work referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants, Section Laborers Jessie Noise and Frank Satterfield were regularly assigned as such, with headquarters at Houston, Texas under the supervision of Section Foreman J. C. Patterson.

On January 31, 1955 the Carrier assigned the claimants to perform work customarily recognized as Bridge and Building work in the unloading of a car of Bridge and Building material at the aforementioned location. The Claimants consumed six hours each in the performance of this work for which they were compensated at their regular section laborer's rate of pay.

The rate of pay paid section laborers is less than that paid Bridge and Building helpers.

The Carrier has refused to allow each Claimant the difference between what they received and what they should have been paid at the B&B helper's rate of pay for the time they were engaged in the performance of Bridge and Building work.

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: Rule 11 of Article 5 of the effective Agreement reads as follows:

Inasmuch as Noise and Satterfield performed only laborer's work, they were fully and correctly paid when paid the laborer's rate of pay for work performed. Having been correctly and fully paid for their services, there is no agreement basis for the claim.

All data submitted in support of the Carriers' position have been heretofore submitted to the employees or their duly accredited representatives.

The Carriers request ample time and opportunity to reply to any and all allegations contained in Employees' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employees in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas respectfully request the Third Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Companies and each of them, such other relief to which they may be entitled. (Exhibits not reproduced)

OPINION OF BOARD: The claimants, who were Section Laborers on January 31, 1955, unloaded a large quantity of lumber from M-K-T Car 43448 and then stored the same in a storage area, where the lumber remained stored, until August, 1955. At that time, it was released to the B & B Department for use on one of its projects.

The Employees state that they should be paid the B & B helper's rate rather than the section laborer's rate for the six hours that they worked on January 31, 1955 on the unloading and storing of this lumber. The Carrier violated Article 5, Rule 11 and Article 15, Rule 1, of the effective agreement. The Employees also point out that a settlement in a similar matter was made with the Carrier on October 22, 1951.

The Carrier states that the work in question was performed by the claimants while under the direct supervision of their section foremen and not as an "occasional assistance" to any B & B gang.

Similar claims have been before this Division and there is a conflict in the Awards. Some are in the favor of the Employees, but most are in favor of the Carrier. If the work is performed by section laborers assisting the Bridge and Building gangs, they are paid under Article 15, Rule 1. If the section laborers are not assisting B & B gangs, they receive their regular section laborer's rate of pay. The work in question was unloading and storing of lumber that was to be used by B & B gangs at some future date. The claimants were not assisting B & B gangs in the handling of this lumber.

The letter of settlement, dated October 22, 1952, referred to by the Employees states that the section laborers were loading and unloading B & B material and it does not state that in the loading and unloading of this material whether or not the section laborers were assisting B & B gangs. The letter of settlement does not state whether or not the material was stored. The work performed in this claim was the handling and storage of lumber and it may be regarded only as the handling of company material and paid for at the section laborer's rate.

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 did not violate the agreement.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November, 1960.