

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, 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 provisions of the current working Agreement when it did not allow Section Foreman J. R. Harris pay for three (3) eight-hour days for time consumed on December 2, 3 and 4, 1957 in carrying out instructions of the Carrier.

(2) Section Foreman J. R. Harris now be allowed 24 hours' pay at the Section Foreman's rate for time consumed on December 2, 3, and 4, 1957, in carrying out instructions of the Carrier.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. R. Harris was employed as Section Foreman on Section No. 282 at Atoka, Oklahoma on November 29, 1957. He was instructed by Roadmaster L. M. Wheeler to report at the company hospital at Denison, Texas, for a physical examination Monday, December 2, 1957. In accordance with said instructions, Mr. Harris did report for examination and was examined by a Carrier physician on Monday, December 2, who advised him that he was physically fit to perform his usual and customary duties and for him to return home and return to work. The Claimant then proceeded to the Denison depot, ready to board train No. 6, when he was called on the public address system and advised to return to the Company Hospital for further examination.

Mr. Harris complied with said instructions and was examined again on Tuesday, December 3 by a Doctor Fry, and submitted to chest and heart examinations, blood test and several other tests. On Wednesday, December 4, 1957, Doctor Fry advised Mr. Harris that he was physically fit and for him to return home and return to his usual and customary duties. Mr. Harris was not allowed pay for the time lost on December 2, 3, and 4, 1957, while carrying out instructions of Roadmaster L. M. Wheeler, on December 2, 3, and 4, 1957.

language thereof, and to determine questions relating to the performance or violation of such agreements. The Railway Labor Act provides methods and procedure whereby such agreements may be terminated and new ones negotiated if the parties thereto feel they should be altered or modified. If the yardmasters here are performing the duties of yardmasters as the employees contend, this situation may be remedied through termination of the present contract, and negotiation of a new one properly classifying the positions in accordance with the facts established. **This Board, however, is without power or authority to arbitrarily change the clearly expressed provisions of any agreement between carrier and employees.**" (Emphasis ours.)

Carrier has clearly shown by excerpts from Awards of all the Divisions of the Adjustment Board above that it has been consistently held that the function of the National Railroad Adjustment Board is to interpret, and not to write, agreements.

This request of the Employees and Organization, which is in effect, a request for a new rule, should be denied, and Carrier so requests.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, a monthly salaried employe, was observed by the Carrier's supervisory officer to have difficulty breathing, and required frequent rest. The Claimant informed the roadmaster that he had consulted a doctor, and had asthma, bronchitis, and leakage of the heart. In time, he was ordered to report to the hospital for physical examination where he was found fit to work. The examination took three days for which the Claimant was not paid. The claim here is for compensation for the three days for which compensation was not paid.

The claim is made under Rule 5 of Article 9 which reads as follows:

"Employees whose responsibilities and/or supervisory duties require service in excess of the working hours or days assigned for the general force will be compensated on a monthly rate to cover all service rendered, except that when such employees are required to perform work which is not a part of their responsibilities or supervisory duties, on rest days or holidays in excess of the established working hours, such work will be paid for on the basis provided in these rules in addition to the monthly rate. Section Foremen required to walk or patrol track on rest days or holidays shall be paid therefor on the basis provided in these rules in addition to the monthly rate.

Supervisory forces shall be compensated on the same overtime basis during work days as the men supervised when the general force is required to work in excess of eight (8) hours per day. The hourly rate of supervisory employees will be determined by dividing the monthly rate by 169 $\frac{1}{3}$."

The rule itself provides for overtime pay. It is not a guarantee rule. There is nothing to show that the Carrier's action was arbitrary or capricious as in Award 11648 of this Division. In fact the examination appears to have resulted from observation that the Claimant was not well, coupled with statements by the Claimant that he had specific physical ailments. This knowledge

put the Carrier under an obligation to determine the Claimant's ability to work and to ascertain if continued work would impair his health. The schedule does not require the time to be at the Carrier's expense.

The examination took three days. The time appears to be unusually long, but there is no evidence that this was the fault of the Carrier.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.