

Award No. 13825

Docket No. MW-14912

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, on Sunday, September 23, 1962, it assigned or otherwise permitted Section Foreman Charles Barnes to drive the truck assigned to Section #23 instead of using the regular employe (Section Laborer—Truck Driver Howard Vaughn) to perform such rest day service. (System File No. 30-20-93).

(2) Section Laborer—Truck Driver Howard Vaughn be allowed the exact amount of monetary loss suffered as a result of the aforesaid violation."

EMPLOYES' STATEMENT OF FACTS: The claimant is the regularly assigned section laborer-truck driver in the gang assigned to Section No. 23, headquartered at Bluffton, Indiana. He has established and holds seniority rights as a laborer-truck driver as of June 22, 1960 and he secured his position by bidding on same when it was bulletined.

On Sunday, September 23, 1962, the Carrier required the services of a section laborer-truck driver to operate the truck assigned to Section No. 23 in connection with the work of extinguishing a fire on the Carrier's right-of-way near Fort Wayne, Indiana. The claimant was available, willing and able to perform the work of his class and would have done so had he been called. However, instead of calling the claimant, Section Foreman Charles Barnes called Assistant Foreman George Smith and then Foreman Smith drove the truck himself. The foreman and assistant foreman worked from 2:45 P. M. to 5:45 P. M. and were paid for the three (3) hours at their respective time and one-half rates.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The agreement in effect between the two parties to this dispute dated February 1, 1951, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The seniority rights which the claimant has established as a section laborer-truck driver entitle him to perform the work of that class in both regular and overtime service in preference to other em-

calendar days, he will not acquire a seniority date as a result of filling such position. No seniority will be acquired by an employe temporarily promoted to a non-bulletined position but he will continue to accumulate seniority in the position from which taken.

“(e) The seniority of trackmen or laborers will not apply until they have been in continuous service of the railroad 30 days.”

The quoted remaining portion of Rule 1 lists the positions included in the System, Division and Roadmaster's Seniority Districts and sets forth the manner in which seniority is obtained. It includes no reference whatsoever to the work performable by any of such positions. This has always been determined by history, custom and practice and the service performed by the foreman in the instant case was strictly in conformity with the past practice.

It is significant to note that the title of Track Laborer-Truck Driver is not included in these listings and the rule has not been amended to include such a job title in its coverage.

For the reason set forth above, the Carrier holds the instant claim is completely without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the same parties, Agreement and in substance the same issues as in Award No. 13824. For the reasons set forth in that Award, we will sustain the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August, 1965.