

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SOUTHERN PACIFIC COMPANY  
(Texas and Louisiana Lines)

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

(1) The Carrier violated the Agreement when, on Saturday, January 25, 1964, it assigned or otherwise permitted Machine Operator J. M. Collins to drive the truck assigned to Extra Gang No. 218 instead of using the regular employee (Laborer-Truck Driver Juan C. Perez) to perform such rest day service. (MW File 64-7.)

(2) Laborer-Truck Driver Juan C. Perez be allowed sixteen (16) hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant is the regularly assigned laborer-driver in Extra Gang No. 218. Truck No. 764 is assigned to Extra Gang No. 218 and the claimant operates this motor vehicle Monday through Friday of each week.

On Saturday, January 25, 1964, the Carrier assigned Roadway Machine Operator J. M. Collins to operate Truck No. 764 in performing the work of moving equipment of Extra Gang No. 222 from Houston to Goliad, Texas. Mr. Collins is not a member of any gang, but he was working with Extra Gang No. 222 under the supervision of Extra Gang Foreman L. T. Legg. For this work Mr. Collins received 16 hours' pay at his time and one-half rate.

The claimant was available, fully qualified to perform the subject work and would have done so if the Carrier had assigned him to it.

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 May 1, 1963, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

It can be seen that this rule is inapplicable in this case, since there was no increase in forces, and no temporary vacancies filled. There were no laid-off employees involved.

**"ARTICLE XI.**

**THE 40-HOUR WEEK**

(National Agreement of March 19, 1949)

(i) \* \* \*

Work On Unassigned Days: Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases, by the regular employee."

This rule lends no support to Organization's position since there were no available extra or unassigned employees who did not have forty (40) hours of work in that work week, and Carrier did, when it saw that work was required to be performed on a day which was not a part of any assignment, called in the regular employee, which in this case was Roadway Machine Operator J. M. Collins, who regularly works with this gang five days per week. If this same work had been performed during a regular work day, Monday through Friday, the carrier certainly would not have been required by agreement to take a laborer away from one track gang and use this laborer with another track gang on which he was not assigned.

**CONCLUSION**

Carrier has shown that this claim is entirely lacking in merit or agreement support and, therefore, requests that said claim be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** In this case, it is alleged by the Organization that the Claimant is regularly assigned to the position of Laborer-Truck Driver on Extra Gang No. 218. Truck No. 764 was assigned to Extra Gang No. 218 and was driven by Claimant during his regularly assigned work week of Monday through Friday. On Saturday, January 25, 1964, a rest day of the Claimant, a Machine Operator working Extra Gang No. 222 operated Truck No. 764 in transporting the equipment of the Carrier assigned to Extra Gangs No. 219 and 222 from Houston to Goliad. The equipment was left at Goliad, and the truck was returned to Gang No. 218 at Houston.

The work in question is the operation of the Truck No. 764 on Saturday, January 25, 1964. The Organization alleges that this was a regularly assigned rest day of the Claimant and not a part of any assignment. They therefore assert that the work in question falls under the rule relating to work on unassigned days.

The Carrier raises several issues in defense of its action in this case. First it says that the case involves the temporary assignment of Truck No. 764 to service not connected with Claimant's gang. The Carrier then argues that in order to prevail, Claimant must prove that the specific work involved is regularly assigned to him to the exclusion of others. The Car-

rier further argues that there is a clearly established past practice whereby work such as that involved in this case has been assigned to other employes, not in Claimant's position. In other words, Carrier asserts that this is, in part, a Scope Rule case.

We are of the opinion that Award 13824 (Dorsey) dealt with the basic issues which are involved in this case. The effect of that opinion was that the rule pertaining to work on unassigned days was specific in nature and therefore prevailed over any general rule in the agreement, such as the Scope Rule.

We believe that all of the elements necessary to comply with the rule concerning work on unassigned days have been satisfied by the Organization in this case. Therefore, since we concur in the Findings of Award 13824, 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 Agreement was violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1965.

#### CARRIER MEMBERS' DISSENT TO AWARD 14029, DOCKET MW-15236 (Referee Hamilton)

The Author of this award has conspicuously abstained from discussing the evidence and making appropriate findings of fact on the controlling issue. He could not have made appropriate findings without exposing the obvious error in the award.

Professedly, the award follows Award 13824, but the principle recognized in that award requires denial of the instant claim. The number one finding of fact in that case was:

"It is not disputed that: (1) Claimant was the 'regular employe' assigned to operate the truck; . . ."