Award No. 14081
Docket No. MW-15403

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

FORT WORTH AND DENVER RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it called two section laborers, regularly assigned to the Wichita Falls section under Foreman J. A. Berg, to perform overtime work and failed to call Foreman Berg for this same overtime work starting at 5:40 P. M. on December 29, 1963 and ending at 7:00 A. M. on December 30, 1963. (Carrier's File W-56.)

(2) Section Foreman J. A. Berg now be allowed 13⅓ hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Claimant Section Foreman J. A. Berg and the two section laborers here involved were regularly assigned to their respective positions on a section gang headquartered at Wichita Falls, Texas, with a work week extending from Monday through Friday (rest days were Saturday and Sunday).

At 5:40 P. M. on Sunday, December 29, 1963, the Carrier called and used the aforementioned section laborers, who were regularly assigned to work under the direction and with the personal assistance of the claimant, to assist with track work at a derailment near Chillicothe, Texas. They worked continuously, **under the direction of a foreman of another section gang,** until 7:00 A. M. on Monday, December 30, 1963 in the performance of this work.

The claimant was available, willing and qualified to direct and assist the section laborers from his gang in the performance of the subject overtime work but was not called and notified to do so.

The Agreement in effect between the two parties to this dispute dated January 1, 1955, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: At the outset, we point out that there is no dispute between the parties with respect to the factual situation set forth in our Statement of Facts.

Everything that has been said by the Board in the above awards applies with equal force and effect to the claim here involved, and consistency alone requires denial of the claim in its entirety.

Because the union has still not informed Carrier what provision of the agreement has been allegedly violated, it is patent that Carrier is in a quandry as to how to defend against this ridiculous claim. Certainly, if a violation of some portion of the collective agreement allegedly was committed, it would seem that the union would have the courtesy to at least tell the Carrier what it was supposed to have violated while the claim is being handled on the property. It is axiomatic, however, that the burden is not on the Carrier to show that its action is authorized by some provision of the agreement; rather the burden is on the complaining employe to show that the action violates some part of the agreement. See Third Division Award 10950. Since Petitioner has not seen fit to tell Carrier what rule was allegedly violated during the six-month period the claim was being handled on the property, it is obvious that the union has no basis in the agreement to support the claim, and cannot therefore meet the burden required of the union to prove that any violation exists in this case. See Third Division Award 10067.

In summary, it must be remembered that:

1. Two section laborers were used outside their regularly assigned hours to haul material in a truck and assist at a derailment on another section under the supervision of another section foreman.

2. No supervision by the claimant foreman was required.

3. No rule has ever been cited by Petitioner to support this unwarranted claim.

4. The Third Division has consistently denied identical claims where employes were worked on an overtime basis without supervision of their foreman, as noted in the awards cited herein, and it must also deny this claim.

With these facts before it the Board has no alternative but to deny the claim in its entirety.

OPINION OF BOARD: Claimant was the Section Foreman assigned to a gang headquartered at Wichita Falls, Texas, with assigned work week Monday through Friday, his assigned rest days being Saturday and Sunday. On the dates specified in the Claim, Carrier called and used two section laborers regularly assigned to Claimant's gang to assist with track work incident to a derailment at Chillicothe, Texas. It is the contention of Petitioner that the Section Foreman must be called out whenever section laborers assigned to his gang are called out.

In the handling of the case on the property, Petitioner failed and refused to identify any rule or rules of the Agreement allegedly violated. In Award No. 13741 we held:

> "We are of the opinion that when, on the property, a claim is made stating that an agreement has been violated without specifing (sic) the rule(s) allegedly violated and Carrier responds that it is

not aware of any rule prohibiting the action complained of, the burden shifts to the Organization to particularize the rule(s).

It is axiomatic that: (1) the parties to an agreement are conclusively presumed to have knowledge of its terms; and (2) a party claiming a violation has the burden of proof.

When a respondent denies a general allegation that the agreement has been violated for the given reason that it is not aware of any rule which supports the alleged violation, the movant, in the perfection of its case on the property, is put to supplying specifics. It is too late to supply the specifics, for the first time, in the Submission to this Board — this because: (1) it in effect raises new issues not the subject of conference on the property; and (2) it is the intent of the Act that issues in a dispute, before this Board, shall have been framed by the parties in conference on the property.

Upon the record, as made on the property, we are unable to adjudicate the merits of the alleged violation. We will dismiss the Claim:"

For the reasons stated in Award No. 13741, we will dismiss the instant Claim.

Although we do not reach the merits of the Claim we call attention of the parties, for their future guidance, to Award No. 13836 involving the parties herein; and, Awards Nos. 11075, and 13328.

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 upon the record made on the property we are unable to adjudicate the merits of the Claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1966.