

Award No. 14305
Docket No. MW-14316

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

NORTHERN PACIFIC RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted a section foreman to perform the usual and customary duties of a truck driver on Saturday, March 10, 1962.

(2) Truck Driver Angelo Cocchiarella now be allowed four (4) 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: Claim Angelo Cocchiarella was regularly assigned (by bulletin) as Truck Driver on Section No. 26 with headquarters at Missoula, Montana. He had established and held seniority in that rank. He was assigned a work week extending from Monday through Friday (rest days were **Saturdays** and **Sundays**).

On Saturday, March 10, 1962, the Carrier called Section Foreman Harry Bergren of Section No. 26 to replace a broken rail on said section near Frenchtown, Montana. Foreman Bergren called four sectionmen to assist with said work but did not call or attempt to call the claimant to drive the truck assigned to his gang. Instead he operated the truck which was used to transport the men, tools and materials to and from the broken rail site.

Section Foreman Bergren, accompanied by the four sectionmen, departed from Missoula at 11:30 A. M. and returned thereto at 3:30 P. M.

The claimant was available, willing and fully-qualified to have performed the work of his position had he been called and given the opportunity to do so.

The Agreement in effect between the two parties to this dispute dated April 1, 1952, together with supplements, amendments and interpretations thereto, is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Missoula, Montana, is located on the main line of the Northern Pacific Railway.

A freight yard is maintained in Missoula and the approximate distance between the extremities of this yard is five miles.

A section crew is assigned to work in Missoula Yard. The complement of this section crew usually consists of:

- 1 Section Foreman
- 2 Asst. Section Foremen
- 2 Truck Drivers
- 25 Sectionmen

Harry Bergren is assigned to the position of foreman in charge of the section crew, working from 8:00 A. M. to 5:00 P. M., Monday through Friday. The section foreman is provided with an International 3/4-ton pickup truck. This is a single seat, three passenger truck with space available on the bed of the truck for additional riders. This truck is used by the section foreman to transport himself and members of his crew.

Angelo Cocchiarella is assigned to a position of truck driver in this section crew, working from 8:00 A. M. to 5:00 P. M., Monday through Friday. Angelo Cocchiarella is assigned to operate a 2½-ton Ford Truck, which truck is used to transport men and material.

On Saturday, March 10, 1962, Section Foreman Harry Bergren was called to assist in replacing a broken rail at MP 139, near Frenchtown, approximately 17 miles distant from Missoula. Mr. Bergren, with the use of the International pickup truck, transported four sectionmen from Missoula to MP 139 and assisted in replacing the rail, after which he returned to Missoula. Mr. Bergren departed from Missoula at 11:30 A. M. on March 10, 1962 and returned at 3:30 P. M. on that date. No material was handled in the pickup truck from Missoula to MP 139.

Claim has been presented by Angelo Cocchiarella for payment of four hours computed at time and one-half rate on March 10, 1962 because of not having been called to transport the four sectionmen from Missoula to MP 139 and return, which claim has been declined.

OPINION OF BOARD: The Organization contends that Carrier violated the Agreement when on Saturday, March 10, 1962, it permitted a section foreman to perform the duties of a truck driver. They ask that the incumbent truck driver be allowed four (4) hours' pay at his time and one-half rate of pay.

On the date in question the section foreman transported men and/or men and materials in a 3/4 ton pickup to a point some 17 miles from Missoula to assist in replacing a broken rail. The Claimant is regularly assigned to the position of truck driver in this section crew, working 8:00 A. M. to 5:00 P. M. Monday through Friday. He is assigned to operate a 2½ ton Ford truck.

The pickup driven by the section foreman is regularly assigned to him. The Employees assert that they agreed with Carrier that the section foreman could use the pickup to transport men within the Missoula Yard. The Carrier states that the section foreman regularly used the pickup to transport men and materials within and without of the Missoula Yard.

We are concerned here with a general Scope Rule. Rule 30 (g) is a specific rule and would take precedence over any general rules.

Rule 30 (g) reads:

"(g) Work on Unassigned Days: Where work is required by the Railway Company 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 otherwise will not have forty (40) hours of work that week; in all other cases by the regular employee."

Award 14160 (Schmertz) clearly analyzes the intent of rules identical to Rule 30 (g).

Award 14160 states:

"This is not a work reservation to a craft. Indeed within the system such work may be performed by other crafts. Rather it is a protection to an individual employee and as such is quite compatible with the above referred to awards concerning work reservations. If we were to find that the Scope Rule requirements applied to Rule 8(ln) we would be substantially and materially negating its meaning."

In the instant dispute we are confronted with assertions and counter-assertions but find no probative evidence. The awards of this Board are clear and the Claimant is entitled to a sustaining award if it can be shown that he alone performed the work in question during his assignment. The Employees must bear the burden of proving their case.

Without sufficient evidence upon which to base a determination of the issue we must dismiss the claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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 claim should be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1966.

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