

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when, on January 13, 1962, it called and used a relief section gang to perform overtime service on Section No. 8 from 12:01 A. M. to 7:00 A. M. instead of calling and using the Section gang regularly assigned to that section.

(2) Section Foreman A. H. Miller and Section Laborers T. L. Jones and J. F. Lopez each be allowed seven (7) hours' pay at his respective time and one-half rate because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants were regularly assigned to their respective positions on Section No. 8 headquartered at East Anaconda, Montana, with a work week extending from Monday through Friday (Saturday and Sunday being rest days). Their assigned hours were 7:00 A. M. to 3:30 P. M., including a thirty (30) minute meal period.

Each of the aforementioned positions were considered and recognized as seven day positions which were necessary to the operational requirements of the Carrier. Relief positions to furnish relief on the rest days thereof were established by and in accordance with the following quoted bulletin.

**"BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY
ANACONDA, MONTANA**

MAINTENANCE OF WAY AND STRUCTURES DEPARTMENT

BULLETIN NOTICE

Date: December 22, 1961

Bulletin No. MW 39-61

Title of Position:

Relief Section Foreman

A time claim was filed by Regular Foreman Arnold H. Miller and two of his laborers, T. L. Jones and J. F. Lopez, claiming eight (8) hours at time and one-half because the relief foreman and his two laborers were called out for this emergency work. This claim was declined by Superintendent McCarvel and then appealed to him by General Chairman J. G. James in letter dated January 17, 1962. Superintendent McCarvel again declined the claims on appeal in letter dated February 7, 1962 to the General Chairman. Thereafter, no appeal of the Superintendent's decision was made to the General Manager, the highest officer designated to negotiate all working agreements on the property and all claims and grievances in connection therewith.

(Exhibits not reproduced.)

OPINION OF BOARD: The acceptance by Carrier's highest officer of the claim on its merits and denial thereof on the merits, without comment on any procedural defect, foreclosed any relief that may have been due Carrier under Article V of the 1954 Agreement.

On the merits we find that Claimants have made out a prima facie case which Carrier has failed to rebut. Carrier's submission contains little except a concession that the factual allegations of the claim are correct—followed by general conclusions, not specific facts.

The claim will be sustained. Under authority of Award Nos. 13177, 13191, 13312 and others, Claimants will each be allowed the pro-rata rate for 7 hours work on January 13, 1962.

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 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 Agreement was violated.

A W A R D

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 June, 1966.

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