

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**DETROIT AND TOLEDO SHORE LINE
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it failed and refused to compensate Wilson England and Charles Saxton for time consumed in going from and to their headquarters during October and November 1964.

(2) The Carrier further violated the Agreement when it refused to reimburse Wilson England and Charles Saxton for the use of their automobiles while traveling from and to their headquarters during October and November 1964.

(3) Claimant England be paid \$152.71 and Claimant Saxton be paid \$91.08 because of the aforesaid violations. (System file D-EX-2.)

EMPLOYEES' STATEMENT OF FACTS: The claimants are regularly members of the gang assigned to Section No. 2, with headquarters at Monroe, Michigan. They were directed to report to Edison, Michigan to work with machine operators on the territory assigned to Section No. 3. The claimants were not provided with a means of transportation from and to their home station at Monroe; were not accompanied by outfit cars or furnished with meals and lodging. Consequently, the claimants were required to use their personal automobiles to travel from and to their home station each day they worked away from their regularly assigned territory.

Claimant England worked on Section No. 3 on October 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29 and 30, November 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, 1964. Claimant Saxton worked on Section No. 3 on October 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29 and 30, 1964. Each claimant submitted Forms 706 for payment of a mileage allowance of \$3.80 (9½ cents per mile X 40 miles) and one hour of travel time at the trackman's straight time rate for each day he was required to work on Section No. 3. The Carrier refused to allow same.

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 July 1, 1950, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claimants, prior to dates of claims, were machine operators at Rockwood, Michigan. Machines were transferred to Edison plant and claimants declined to submit applications for same, and then exercised their seniority to the extra gang at Edison as track laborers.

OPINION OF BOARD: Claimants, through the Organization, contends that Carrier violated the Agreement by failing and refusing to compensate them for "time consumed in going from and to their headquarters" and for "the use of their automobiles while traveling from and to their headquarters."

While there is considerable confusion and inconsistency in the submissions by both parties, the facts most favorable to Claimants evolve as follows:

Claimants were regularly assigned to Section Gang No. 2 which, prior to the date of the claims, was headquartered at Monroe, Michigan. During this period (April 27, 1964 to October 9, 1964) Claimants worked as machine operators.

The positions of operators on these machines were abolished effective close of business October 9, 1964 at Monroe, Michigan and the operation was moved to Edison, Michigan. Having failed to bid on the machine operator jobs at Edison, Carrier instructed Claimants to report to work at Edison. There is confusion as to whether Claimants worked on the Extra Gang or on the Section Gang at Edison. Suffice it to say that Carrier concedes that "Claimants, being no longer assigned as machine operators, perforce reverted to their previous positions as laborers on Section Gang No. 2, which, on October 12, 1964, also commenced working at the Edison plant."

This dispute hinges on the determination of the location of headquarters of Section Gang No. 2 on the dates involved in this claim.

If, as the Organization contends, the headquarters remained at Monroe, Claimants should be entitled to the compensation claimed.

If, as the Carrier contends, the headquarters was moved to Edison, Claimants would not be entitled to compensation.

Unfortunately and for reasons not readily apparent, the Record is virtually barren of facts. With the exception of one letter, there is nothing in the Record to indicate what transpired in the handling of this dispute on the property.

That letter is quoted as follows:

"Mr. C. M. Johnson, General Chairman
Brotherhood of Maintenance of Way Employes
P.O. Box 394
Buchanan, Virginia

File D-EX-2
Re: Letter dated February 26, 1965

Dear Sir:

This is a claim by each of two employes, Wilson England and Charles Saxton, for automobile mileage and one (1) hour additional for each day for a stated period of time.

Wilson England's claim is for automobile mileage because, 'Auto used for company business driving from Monroe to Edison and return' and, 'an additional one (1) hour per day' for a total of twenty-five days for the period from October 12 through November 13, 1964. The mileage claimed is for 40 miles per day at 9½ cents per mile for 25 days.

Charles Saxton's claim is almost identical with the exception that the period of time is from October 12 through October 30, 1964, for a total of 15 days.

On October 5, 1964, an assignment was made to the successful bidders on eight machine operators' assignments, and the place of operation was with the section laborers at Edison. Neither claimant submitted bids on this bulletin leading to the assignments above although earlier in the year they were successful bidders on another bulletin and each one operated a machine most of the summer.

Article 13 — Travel Assignments — states, in part, in paragraph (a):

'An employe given authority in writing by the supervisory officer to use his own automobile for travel will be reimbursed for such use at the rate per mile allowed by the company to its employes.'

Neither employe was on company business, they did not use their automobiles for company business, and they were not given authority to do so.

Article 12 — Travel Time — states in paragraph (e):

'Employes will not be allowed time or expenses while traveling in the exercise of seniority rights, or between their homes and designated assembling points, or for other personal reasons.'

The designated assembling point was Edison.

Because neither employe used their automobile on company business and because neither one was traveling from one designated place of assembling to another designated place of assembling by proper authority or otherwise, these claims are respectfully denied in their entirety.

Yours truly,

/s/ C. J. McPhail

cc: Mr. H. C. Wertenberger"

We cannot assume, as Claimants contend, that the headquarters of Section Gang No. 2 remained at Monroe by reason of the statement by Carrier in its submission that "Claimants, being no longer assigned as machine operators, perforce reverted to their previous positions as laborers on Section Gang No. 2, . . .," particularly in view of the existence in the Record of the un rebutted statement made by Carrier's highest designated officer in his letter to the General Chairman that "The designated assembling point was Edison."

In view of the paucity of evidence in the Record, we are constrained to hold that Claimants' failure to meet the requisite burden of proof precludes us from considering this dispute on the merits.

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 Claim shall be dismissed.

AWARD

The Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1966.