

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Don Harr, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES****MISSOURI-KANSAS-TEXAS RAILROAD 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 Roadmasters J. E. Clark and J. T. Flake and Assistant Roadmaster J. W. Couch to perform extra gang foremen's and assistant extra gang foreman's work on Extra Gangs No. 363 and 366. [Carrier's File 2579]

(2) Either Mr. Dale Yount, Mr. E. W. Swain or Mr. D. W. Beaver, whichever is determined to be the senior, be allowed the difference between what he was paid at the track foreman's rate and what he would have received at the extra gang foreman's rate had he been used to perform the work referred to in Part (1) of this claim. (Claim is retroactive to 60 days from October 7, 1964 — date of claim presentation.)

EMPLOYEES' STATEMENT OF FACTS: Messrs. Dale Yount, E. W. Swain and D. W. Beaver were regularly assigned as track foremen on the territory upon which the subject work was performed.

During the period of this claim, Extra Gangs No. 363 and No. 366 were assigned to perform the work of installing ties and surfacing track. Extra Gang No. 363 was assigned to the territory of Roadmaster J. T. Flake while Extra Gang No. 366 was assigned to the territory of Roadmaster J. E. Clark and Assistant Roadmaster J. W. Couch. Each gang consisted of 32 men and the foreman.

In the performance of the aforesaid work, each of the gangs was divided into two separate units, with one of the units being substantially larger than the other. The larger unit worked ahead of the other unit, removing the old ties and installing the new ones. The smaller unit utilized a tamping machine and surfaced the track, working as far as four (4) miles behind the other unit. The foremen were required to operate the tamping machines and to direct and supervise the employees working with the small units of their respective gangs. The large unit of Extra Gang No. 363 was directly and completely supervised by Roadmaster J. T. Flake while Roadmaster J. E.

The first paragraph of Mr. Jones' letter clearly states a claim on behalf of either Mr. Dale Yount, Mr. C. W. Swain or Mr. D. W. Beaver, that claimant be paid the difference between the rate of pay received by him and track foreman's rate of pay, beginning 60 days prior to the date of Mr. Jones' letter, or August 8, 1964.

The balance of Mr. Jones' letter of October 7, 1964, is so vague, indefinite and uncertain as to defy comprehension, as at no time does he so much as allege that any specific action of the Carrier was in violation of any specific rule of the agreement.

Nevertheless, this vague, indefinite, uncertain and incoherent claim was progressed by General Chairman Jones throughout the usual steps on the property, and appealed to the undersigned highest operating officer of the Carrier designated to handle time claims on January 11, 1965 (Carrier's Exhibit A, Sheet 8), declined by the undersigned on January 29, 1965 (Carrier's Exhibit A, Sheets 12 and 13), discussed in conference on March 16, 1965, and carrier's original declination affirmed on March 19, 1965.

The entire record of handling given this alleged claim is contained in the correspondence between the parties which has been reproduced by photocopy processes and is attached hereto as Carrier's Exhibit A, Sheets 1 to 41, inclusive.

The current working agreement, No. DP-357, between the Missouri-Kansas-Texas Railroad Company and the Employees Represented By Brotherhood of Maintenance of Way Employees is on file with the Third Division, National Railroad Adjustment Board.

(Exhibits not reproduced.)

OPINION OF BOARD: In this case we are faced with several procedural questions raised by the Carrier. The first is that the claim appealed to the Board is not the same claim handled on the property, and thus not properly before us for consideration.

The original claim filed on the property is set out in a letter addressed to Carrier's Division Engineer, dated October 7, 1964. This letter is attached to Carrier's submission as Carrier's Exhibit A.

The important part of the original claim reads:

"Kindly accept this as a time claim in behalf of Mr. Dale Yount, Mr. C. W. Swain or Mr. D. W. Beaver, whichever, through proper processes, is determined to be the senior, all of whom were assigned as track foreman under circular released on August 10 and 12, 1964. This claim is specifically for the difference between the rate of pay received by either Mr. Yount, Mr. Swain or Mr. Beaver to begin sixty (60) days prior to the date of this letter, or August 8, 1964, and track foreman's rate of pay."

Paragraph (2) of the Claim appealed to this Board reads:

"Either Mr. Dale Yount, Mr. E. W. Swain or Mr. D. W. Beaver, whichever is determined to be the senior, be allowed the difference

between what he was paid at the track foreman's rate and what he would have received at the extra gang foreman's rate had he been used to perform the work referred to in Part (1) of this claim. (Claim is retroactive to 60 days from October 7, 1964 — date of claim presentation.)"

The claim, as originally presented, sought compensation in the amount of the difference between the rate received by the Claimants and the track foreman's rate of pay. On appeal the claim was changed to see compensation in the amount of the difference between what Claimant has been paid and the extra gang foreman's rate.

In Award 15063 (Ives) we stated:

"The objection raised by Carrier is not merely procedural or technical as the claim before the Board departs to a significant degree from the claim submitted and processed on the property. It is essential that the issues be the same as those which were determined on the property. (Awards 5077, 9343, 10078, 10749.)"

The claim appealed to this Board was not handled as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. We need not consider the other procedural questions raised or the merits of the claim.

The claim will be dismissed.

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 is not properly before this Board.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1967.

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