



Award No. 15836

Docket No. MW-14614

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
LEHIGH VALLEY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, in lieu of calling and using Laborer Walter Abraham to perform track laborer's work during overtime hours on December 24, and 30, 1961, it assigned or otherwise permitted Area Foreman H. C. Clader to perform said work and, as a consequence thereof

(2) Laborer Walter Abraham now be allowed twelve (12) hours' pay at his time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Claimant Walter Abraham was regularly assigned as a Track Laborer with headquarters at Allentown, Pennsylvania. His assigned work week extended from Monday through Friday (rest days were Saturday and Sunday).

On Sunday, December 24, 1961 and again on Saturday 30, 1961, the Carrier called and used Area Foreman H. C. Clader from 8:00 A.M. to 3:00 P.M. respectively, to perform the usual and customary duties of a track laborer. Specifically, the work consisted for removing snow from crossings, platforms, walks and switches.

The claimant was available, willing and fully qualified to perform the track work assigned to the Area Track Foreman but was not called or notified to do so.

The Agreement in effect between the two parties to this dispute dated April 15, 1944, together with supplements, amendments, and interpretations thereto is by reference made part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: On February 26, 1962, Mr. W. C. Burke, Supervisor of Track, Easton, Pennsylvania, received an envelope post-marked February 23, 1962, 9:00 P.M., at Allentown, Pennsylvania (Carrier's Exhibit No. 1) containing the following letter of claim (Carrier's Exhibit No. 2):

(1) The Carrier violated the Agreement when, in lieu of calling and using Laborer Walter Abraham to perform track laborer's work during overtime hours on December 24 and 30, 1961, it assigned or otherwise permitted Area Foreman H. C. Clader to perform said work and, as a consequence thereof

(2) Laborer Walter Abraham now be allowed twelve (12) hours' pay at his time and one-half rate.

We were surprised to receive a copy of Mr. Crotty's letter dated October 18, 1963, addressed to the Executive Secretary of the Third Division, National Railroad Adjustment Board, advising that office it was his intention to file with the Board an ex parte submission in the above claim.

The notes taken by this office at the time of our last discussion of this claim indicate it was pointed out to you our files did not show the Local Chairman had complied with the requirements of Article V, 1(b) of the Agreement dated August 21, 1954, in that the Local Chairman did not notify the Supervisor of Track, the Division Engineer or the Superintendent of the rejection of his decision. You stated you would check this and advise if your records did show the requirements of the rule had been complied with, as without compliance with the requirements of the rule the claim was not properly before this office for consideration.

The receipt of Mr. Crotty's letter was unexpected not only for the reason above stated but also for the fact this office had not received any notice from you that the denial decision given on the merits of this claim in letter dated January 23, 1963, was being rejected and same would be progressed to your Grand Lodge for further handling.

This is to advise you it will be the position of this office the claim now at the Third Division was not properly progressed as required by the rules and, therefore, it is an invalid claim. As the claim is invalid, you may wish to so advise Mr. Crotty's office.

Yours very truly,

/s/ P. N. Mansfield
P. N. Mansfield
Chief of Personnel"

(Exhibits not reproduced.)

OPINION OF BOARD: The claim as presented is barred as it differs from the claim originally initiated and progressed on the property. The issue on the property was relegated to the alleged violation of the Scope Rule, however, in the Organization's submission there is injected for the first time, an attempt to support the claim on new issues; i.e., violation of Seniority and Overtime or Unassigned Day Rules. Such departure from the initial alleged violation not presented or handled on the property, may not, for the first time, be raised before the Board.

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; and

That the Claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1967.