

Award No. 15923

Docket No. MW-14840

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it failed to assign the senior track foreman and the senior track laborers at Gary Mill Yard to perform overtime work at that location.
(Carrier's file VM-18-61.)

(2) Each of the claimants and/or their successors be allowed the exact amount of monetary loss he sustained as the result of the violation referred to in Part (1) of this claim during the period beginning sixty (60) days prior to the date of claim presentation and continuing until said violation is corrected.

(NOTE: date of claim presentation was November 29, 1961.)

The claimants are:

TRACK FOREMAN - R. DAPENA

Track Laborers

S. Ortiz

A. Papadopoulos

A. Ware

D. Spaliaras

G. Andanacapulos

R. Martinez

F. Medina

Track Laborers

R. Trevino

C. Montesinas

F. Cantu

J. Parda

B. Barber

E. Coines

C. Betancourt

(3) A joint check of the Carrier's records shall be made to accurately determine the employees to whom claims should be paid and the amount due each.

day shift employees, pay at their "punitive rate" for each hour the claims in Docket No. MW 12673 worked on the involved night shift. In essence, the Organization is contending that the instantly involved senior day shift employees should have been worked and should be permitted to work sixteen (16) hours or more each and every working day for they have an absolute inalienable right to any and all track construction, maintenance and emergency work which might be required before and/or after their normal daily day shift tour of duty.

The claim herein per se concedes the amount of required work on this night shift. It is interesting to note herein that the Organization never has claimed for senior day shift employees the work performed by the afternoon shift gang which works Monday through Friday. The reason why the Organization hasn't done so is obvious. It would look even more absurd contending that claimants herein should have been worked and should be worked twenty-four (24) hours each and every day.

Carrier's Exhibit A sets forth the Carrier's final handling of the instant case on the property, in accordance with the requirements of the Railway Labor Act.

INVOLVED RULES

The applicable schedule is the Brotherhood of Maintenance of Way Employees' Schedule as revised and reissued August 1, 1952. The controlling rule here is Article V, Section 1 of the August 21, 1954 National Agreement. In the alternative, and without prejudice to the above, as far as the merits of the instant claims are concerned, the same rules applicable to the proper disposition of the Organization's Statement Of Claim in Docket No. MW-12673 on its merits are equally applicable to the proper disposition of the merits of the Organization's instant Statement of Claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier's action here subjected to claim occurred November 9, 1959 when it established an additional track gang.

Organization's letter of protest to Carrier was dated November 29, 1961; and its letter of intent to file a claim with this Board was dated October 1, 1963, clearly beyond the time limitation of 60 days after the date of occurrence fixed by the August 21, 1954 National Agreement.

We do not agree with Organization's argument that this is a continuing claim. We will follow Award 15691 (Dorsey), and 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 was not timely filed as prescribed in Article V 1 (a) of the August 21, 1954 Agreement and we are compelled to dismiss.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1967.