



Award No. 16252

Docket No. MW-16920

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(SUPPLEMENTAL)**

**Milton Friedman, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
SOUTHERN RAILWAY COMPANY**

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

(1) The Agreement was violated when, on February 22, 1965, Supervisors and Assistant Supervisors unloaded machines used in laying ribbon rail at Ooltewah, Tennessee, instead of calling and using the machine operators regularly assigned thereto. (Carrier's file MW-22644)

(2) Machine Operators O. G. McCoy, R. Wolfenbarger, L. W. Jennings, R. D. Kirkpatrick, Earl Southern, C. E. Norris and J. C. Hyde each be allowed four (4) hours' pay at their respective time and one-half rates because of the violation referred to in Part (1) of this claim."

**EMPLOYEES' STATEMENT OF FACTS:** Claimants O. G. McCoy, R. Wolfenbarger, L. W. Jennings, R. D. Kirkpatrick, Earl Southern, C. E. Norris and J. C. Hyde were regularly assigned as operators of machines used to lay ribbon rail at Ooltewah, Tennessee with a work week extending from Monday through Friday, excepting holidays (Saturdays, Sundays and holidays are rest days).

On Monday, February 22, 1965, while the claimants were observing Washington's Birthday holiday, Supervisors and Assistant Supervisors performed the work of unloading the claimants' machines from flat cars and placed same on a side track in preparation for the following day's work.

The claimants have customarily and traditionally performed the work of unloading these machines as a part of their duties as regular assigned operators thereof.

Claim was timely and properly presented and handled by the Employees 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 August 1, 1947, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

Copies of letters exchanged between Carrier and employee representatives, marked Carrier's Exhibits Nos. 1 through 9, are attached hereto and made a part hereof.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Supervisors and Assistant Supervisors were assigned by Carrier on Monday, February 22, 1965, a holiday, to drive various machines off flat cars. Claimants, who have a Monday-to-Friday work-week, have done such work in the past.

Although Carrier contends that Claimants were at home during the holiday and thus unavailable, no attempt was made to reach them. Claimants assert that they were available and willing to work, and no evidence to the contrary was submitted by Carrier.

Under Rule 30 — 1(b)(13), "Work on Unassigned Days," Claimants were entitled to be called in to perform the work which they regularly perform, in preference to Supervisors and Assistant Supervisors who have no seniority as Machine Operators. Prior Awards of this Division (7136, 7294) have held that a holiday is an unassigned day, but even if it were considered a work day then clearly the employees who customarily perform the work are entitled to it; if Monday, February 22, 1965, had not been a holiday, these men would have done the work.

Even more applicable to the issue before us are the holdings of this Board in Awards 15227, 15552, and 15950, specifically requiring Carriers to call in on a holiday the employees who customarily perform the work. Thus there was no justification for supervisors to have been used rather than the regularly assigned Machine Operators.

Although Claimants have established that they should have been called on the holiday, the amount of work involved is not clear from the record. The actual number of machines unloaded, the number of Supervisors and Assistant Supervisors used in this task, and the time required by them to perform the work, are not disclosed.

Had this information been supplied, a precise calculation could have been made of the hours lost by Claimants. Obviously Carrier should not be obligated either to call in or to pay more men than are actually needed to do the work. In view of the vague record on this point, therefore, Claimants are held entitled to the minimum specified in Rule 30 (1)(f), or two hours and forty minutes at time and one-half.

Rule 49 does not, as Carrier contends, apply to employees who are made whole for Carrier's wrongful failure to call them in.

**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 Employee 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.

AWARD

Claimants each shall be paid for two hours and forty minutes at time and one-half.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of April 1968.