



Award No. 16641

Docket No. MW-17451

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

TEXAS CITY TERMINAL RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it called and used a track laborer to drive a truck during overtime hours on November 5, 9 and 10, 1966. (System File 013.293.01/TCT-27)

(2) Truck Driver Gilbert Reyes be allowed five (5) hours and ten (10) minutes' pay at his time and one-half rate because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant Reyes is a regularly assigned truck driver with a work week extending from Monday through Friday. (Saturdays and Sundays are rest days.)

On Saturday, November 5, 1966, (one of claimant's rest days) the Carrier required the service of a truck driver. Instead of calling and using the claimant, who was available and willing to perform such overtime service, it called and used Track Laborer Elias Garcia, who does not hold any seniority as a truck driver. Laborer Garcia received pay for 2 hours and 40 minutes for the above mentioned work. On November 9 and 10, 1966, the Carrier released the claimant at the close of his work period and retained Laborer Garcia to drive the truck during overtime hours. The performance of the overtime work on these dates required 1 hour and 1 hour and 30 minutes respectively. The claimant would have willingly performed this overtime work if he had been given the opportunity to do so.

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 September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Approximately November 16, 1966, Gilbert Reyes, Claimant, submitted time claims for the dates of November 5, 1966, two hours and 40 minutes; November 9, 1966, one hour; November 10, 1966, one hour and 30 minutes, account three quarter ton, utility pickup truck was driven by a member of the Maintenance of Way track department (Carrier's Exhibit A). These claims were declined by Chief Engineer under date of November 17, 1966, (Carrier's Exhibit B), advising Mr. Reyes that the claims were rejected as no contractual basis supported the claims, and a carbon copy was given to the local chairman. The local chairman addressed a letter to Chief Engineer Gresham, under date of November 21, 1966 (Carrier's Exhibit C) and set forth as a basis for the alleged violation, Article III, rule (1) of the agreement. Carrier attaches as Exhibit D the agreement between parties to this dispute. Chief Engineer responded to this appeal under date of November 22, 1966 (Carrier's Exhibit E) and advised that the driving involved in these three claims was only duty incidental to the work involved, and again stating that no basis in the agreement supports the claim. Carrier's Exhibit F is letter from General Chairman E. Jones, addressed to Chief Engineer H. M. Gresham, whereby he presents a claim on behalf of Claimant Reyes and also a claim on behalf of Elias Garcia, a track laborer who allegedly performed truck drivers' duties on the dates of the claim. Chief Engineer replied to General Chairman's letter under date of January 4, 1967 (Carrier's Exhibit G), again advising that the driving was only incidental to the track work to be performed, and would not form a basis for a claim as presented. In this same letter, Chief Engineer advised the General Chairman that this particular truck had been driven by various departments in the performance of their work and that the driving duties are not, and have never been, assigned exclusively to claimant. This resulted in an appeal by General Chairman Jones to President and General Manager J. B. Wimberly, under date of January 30, 1967 (Carrier's Exhibit H). A reply was forwarded February 14, 1967, to the general chairman (Carrier's Exhibit I), again setting forth that no exclusivity of assignment exists, and citing one of the more recent awards of Third Division in support thereof. General Chairman appealed under date of February 24, 1967 (Carrier's Exhibit J) requesting conference. Carrier's Exhibit K is the letter of March 7, 1967, suggesting time and place for conference and Exhibit L is the letter from General Chairman dated March 27, 1967, accepting the date for conference, and advising that these two cases would be discussed concurrently. During the conference March 31, 1967, a letter dated March 28, 1967, was introduced (Carrier's Exhibit M) and introduces into the file for the first time Article (4) and Article (6). Carrier's Exhibit N is the letter confirming the conference on March 31, 1967. Under date of April 6, 1967, General Chairman Jones apparently undertook to be self-appointed reporting secretary of the conference (Exhibit O), setting forth many items that are irrelevant, erroneous, and advising carrier, for the first time, the specific awards that were mentioned in generalization during the conference. This handling led to the notice previously referred to by President Crotty.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is a B&B Helper-Winch Truck Driver in the Carrier's Bridge and Building Department with a regularly assigned work week of Monday through Friday, with Saturdays and Sundays as rest days.

On the dates of the Claim, November 5, 9, and 10, 1966, after Claimant had finished work on his regularly assigned position, other employees of the Carrier

assigned to the Track Department were required to work at various locations on the property. A three-quarter ton general purpose pick-up truck was driven by a Track Department laborer to haul tools and other materials to the job sites. The actual driving time involved a cumulative total of 15 minutes for the three days mentioned in the Claim. Claimant insists that, since, during his regular work week he drives this general purpose pick-up truck, a responsibility or duty incidental to his main responsibilities or duties, he should nevertheless have been called for overtime work when it became evident that the truck was going to be used. Claim is based on an alleged violation of the Seniority rules of the Agreement and more specifically on Article IV — Department Limits. This in pertinent parts reads as follows:

"ARTICLE IV. DEPARTMENT LIMITS

Rule 1. Seniority rights of employees are confined to the Sub-Department in which employed. Except as provided in footnote, the sub-department shall be as follows:

- 1. Track Department (Foremen, assistant foreman, lead track laborers and laborers).**

* * * * *

- 5. Truck and Tractor Drivers**

Article IV, quoted above, is the principal rule upon which this case rests. It is very similar to the Scope Rules of other Agreements, and as such must be interpreted in line with the numerous awards of this Board relative to such rules. Article IV, like so many Scope Rules, is broad and general in its language, merely listing the various categories of employees. To pursue a claim successfully, faced with such a rule, Claimant must show that he has performed the work in question to the exclusion of others. There is no evidence in this record to enable us to say categorically that he has done so. His driving of the pick-up truck is incidental to his main function of B&B Helper and Winch Truck Driver. Other employees have driven this truck in the past. Being unable to demonstrate an exclusive right to the work, and being unable to point to specific language in the contract granting him the work, this Board cannot, by way of contract construction, issue a sustaining award. We will deny the Claim.

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 Agreement was not violated by the Carrier.

AWARD

Claim denied.

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

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 18th day of October 1968.

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