

Award No. 16813
Docket No. MW-17567

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
UTAH RAILWAY COMPANY

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

(1) The Agreement was violated when a roadmaster instead of Track Patrolman Edward M. Chavez was used to patrol track on November 19, 1966, December 17, 1966 and February 22, 1967. (System files U-O-13 and U-O-14.)

(2) Track Patrolman Edward N. Chavez be allowed twenty (20) hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Claimant Edward M. Chavez is regularly assigned as a track patrolman with a work week extending from Monday through Friday (Saturdays and Sundays are rest days) and he customarily patrols track ahead of one train per day in each direction.

On November 19, December 17, 1966 (Saturdays) and on February 22, 1967 (a legal holiday), the Carrier assigned a Roadmaster, who is not covered by the scope of the Agreement, to patrol track on the claimant's assigned territory.

The Carrier made no effort to call the claimant to perform this overtime work.

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, together

*The "AGREEMENT BETWEEN The Denver and Rio Grande Western Railroad Company AND THE Employees in the Maintenance of Way Department REPRESENTED BY The Brotherhood of Maintenance of Way Employees, Rules Effective February 1, 1941, Including Changes and Interpretations to Date of This Reissue March 1, 1952, Rates of Pay Effective February 1, 1951," has been adopted by the parties hereto as the agreement controlling on this property.

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

CARRIER'S STATEMENT OF FACTS: Utah Railway Company, hereinafter called the Carrier, operates, on an exclusive basis, only approximately twenty-three miles of track in Carbon County, Utah, and employs approximately seventy-five persons. The Railway is involved exclusively in the transportation of coal and normally operates trains on a five-day a week basis, although occasionally, during peak demand, trains are operated on Saturday and Sunday.

Chavez, the employee involved in this dispute, is the only Track Patrolman employed by the Carrier, and he spends part of his time working with the section crew as a laborer since his Track Patrolman duties require only two patrols of twenty-three miles of track daily. Chavez' position as well as that of other employees on the track section crew are five-day a week positions under the terms of the contract between the parties.

On the days which are involved in this dispute Chavez performed no duties whatsoever for the Railway and was not notified or requested in any way to report for duty since two of such days were Saturdays and February 22, 1967, was a holiday for which Chavez was paid regular holiday pay. There were no emergencies nor any other reasons that required operating officials to call Chavez to work.

For many years it has been the practice of the Roadmaster in the performance of his duties to inspect his district by traveling over it on engines, trains, or motor cars, or by walking, any day of the week and without restriction as to whether or not the Track Patrolman is on duty. This practice substantially predates the use of a Track Patrolman and was in effect during all of the time that a Track Patrolman was used. Such practice has not been objected to by the Brotherhood until the present dispute.

It has been the normal practice of the Roadmaster for many years to ride over the track involved in this dispute on a motor car on Saturdays and holidays, whether or not trains were moving over the track. The Roadmaster's actions on the days involved herein did not differ from those he regularly performs on other days of the week when traveling over the tracks.

OPINION OF BOARD: The Claimant is a regularly assigned Track Patrolman with a normal work week of Monday through Friday. Petitioner claims that on three days (two Saturdays and a legal holiday) the Roadmaster was used to patrol track in violation of Rule 11½ (n) which reads as follows:

"where work is required by the Carrier to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The Carrier admits that if track was to be patrolled the Claimant was entitled to be assigned to do same on the days in question. The Carrier has consistently denied that the Roadmaster was patrolling track on the three days in question.

The Carrier admits that the Roadmaster was traveling on the tracks on the three days in question but claims that he was doing only Roadmaster work.

The Petitioner has presented no evidence to support its contention. We are asked to form a conclusion based on the allegations of the Petitioner wholly unsupported by evidence of probative value. This we cannot do. The arguments advanced in the petitioner's brief and presented to the Board are persuasive but lack the necessary established facts to support an award.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim denied.

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

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

Dated at Chicago, Illinois, this 27th day of November 1968.