



Award Number 17561

Docket Number MW-17422

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

- (1) The Carrier violated the Agreement when, on December 2, 1966, it called and used a rail lubricator attendant to perform section laborer's work during overtime hours when Section Laborer Frank Collinsworth was available to perform said work. (System File E-349/1-5)
- (2) Section Laborer Frank Collinsworth be allowed 16 hours' pay at his time and one-half rate of pay and 11 hours and 15 minutes' pay at his double time rate because of the violation referred to pay in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant holds seniority within the track sub-department as a section laborer (Rank No. 6). At the time of this claim, he held a regular assignment in that class.

On December 2, 1966, a wreck occurred on the Jellico Branch line. Instead of calling the claimant, who was available, willing and qualified and had registered his telephone number with the proper Carrier officers in accordance with the provisions of Rule 30 (b), to help perform the required section laborer's work, the Carrier called and used section laborers his junior as well as a regularly assigned rail lubricator attendant (Rank No. 4). The employees who were called performed overtime service from 8:00 P.M. on Friday, December 2, until 11:15 P.M. on Saturday, December 3, 1966.

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 May 1, 1960, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

(Exhibits Not Reproduced)

CARRIER'S STATEMENT OF FACTS: On December 2, 1966, at 2:00 P.M., there was a derailment on the Jellico Branch of carrier's Knoxville & Atlanta Division. Rail Oiler Attendant O. M. Harp was called to the

derailment because he had a hy-rail truck which was needed in hauling material from the nearest road crossing to the site of the derailment, and to furnish lights from the headlights and spot lights on his truck for the derailment could not be cleared during daylight hours.

Employees allege that Mr. Harp should not have been called, that as a rail oiler attendant he is in Rank 4, while the overtime work required was track work and should have been performed by a laborer, which is Rank 6.

Claim was filed on the alleged violation in favor of J. Frank Collinsworth, a Rank 6 employee, based on the provisions of Rules 30(b) and (f) of the agreement. When the call was placed for Mr. Harp, Mr. Collinsworth was working as an extra gang laborer at Etowah, Tennessee, 133 miles south of the Jellico Branch.

The service of the hy-rail car was needed to haul material and furnish light at night. Mr. Harp, the rail oiler attendant, is the qualified operator of the hy-rail car; whereas, the claimant is not qualified to operate the hy-rail car, and his services as a laborer were not needed.

Carrier saw no basis for the claim and it was declined. Pertinent correspondence exchanged in connection with the claim is shown by Carrier's Exhibits "A" through "F".

There is on file with the Third Division a copy of the current working rules agreement, and, by reference, it is made a part of this submission.

(Exhibits Not Reproduced)

OPINION OF BOARD: A derailment occurred on Carrier's line at two o'clock P.M. which for some reason could not be cleared during the remaining daylight hours thus delaying the initiation of clearance work until eight o'clock P.M. of the same day.

The Organization contends that the Carrier violated the Agreement because it called a Rail Lubricator Attendant, a higher ranked employee, instead of Claimant, a Section Laborer, to perform overtime work in connection with the clearance which under the Agreement belonged to Claimant.

Carrier defends on the grounds that it called the Rail Lubricator Attendant because he was qualified to operate a hy-rail truck assigned to him which was needed at the derailment site.

The Organization counter-argues that the Section Foreman on this job already had a truck available to him without calling the Rail Lubricator Attendant to bring the one assigned to him.

However, this argument fails to take into consideration that the needs of the service in this situation may very well have required more than one truck.

Consequently, the claim is denied.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.