



Award Number 17804

Docket Number MW-18434

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

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

- (1) The Carrier violated the Agreement when it used a section foreman instead of Truck Driver B. E. Dowell to drive a truck on May 26, 29 and June 1 and 2, 1968. (System file 1-12/E-349-18).
- (2) Truck Driver B. E. Dowell now be allowed twenty-eight (28) hours' pay at his time and one-half rate because of the violation referred to within Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant is a truck driver regularly assigned to Machine Gang No. 26 at Cloverport, Kentucky. He was assigned thereto by Bulletin 6035-A dated May 6, 1968. His regular assigned work week extended from Monday through Friday with Saturdays and Sundays designated as rest days. Although Bulletin 6035-A assigned the claimant to Machine Gang No. 26, he worked under the direct supervision of Mr. A. Kendall, foreman of Section Gang 106 at Cloverport, Kentucky. His duties included hauling tools and material as well as transporting Foreman Kendall and the members of his section gang to and from their assembling point and work location.

The claimant desired to be called for extra work and, therefore, he registered his telephone number with his foreman as well as with the appropriate Carrier officer in accordance with the provisions of Rule 30(b) which reads:

"Employees, who desire to be considered for calls under Rule 31, will provide the means by which they may be contacted by telephone, or otherwise, and will register their telephone number with their foremen or immediate supervisory officer. Of those so registered, calls will be made in seniority order as the need arises.

A reasonable effort must be made to contact the senior employe so registered before proceeding to the next employe on the register. Except for section men living within hailing distance of either their foreman's living quarters or their tool house or headquarter station, and for men living in camp cars when they are present at the camp cars, an employe not registered as above shall not have any claim on account of not being worked on calls."

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.

CARRIER'S STATEMENT OF FACTS: The claimant, Mr. B. E. Dowell, a former employe of the carrier, was assigned as a truck driver and designated as Machine Gang No. 26, with headquarters at Cloverport, Kentucky. In addition to Mr. Dowell being headquartered at Cloverport, a section gang, Foreman Abe Kendall, was also located at that point.

On Sunday, May 26, 1968, at 6:00 A.M., Section Foreman Kendall, was notified of a broken rail in the vicinity of Cloverport. He went to the garage where the truck was located, got the truck and used it to transport the section men to the scene of the broken rail.

On Wednesday, May 29, at around 4:00 P.M., Mr. Kendall was notified that a train had struck a truck-trailer on a crossing at Cloverport and had kicked the track out of line. He went to the garage, got the truck and transported his men to the point of the accident to make repairs.

On Saturday, June 1, at 6:30 P.M., Mr. Kendall was notified of a broken rail at Cloverport. Again he drove the truck to transport his men to the location of the broken rail.

On Sunday, June 2, at 9:30 A.M., Mr. Kendall was notified of a portion of rough track. He went to the garage, got the truck and transported his men to the location to smooth the track.

In each of the above instances, Mr. Dowell was off duty.

The employes alleged that the agreement was violated when Section Foreman Kendall operated the truck and filed claim for Mr. Dowell. Carrier saw no basis for the claim and it was declined. Correspondence exchanged in connection with the claim is attached and identified as Carrier's Exhibits "A" through "I".

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

(Exhibits Not Reproduced)

OPINION OF BOARD: The record shows that Claimant was regularly assigned as truck driver with a machine gang at Cloverport, Kentucky. It is not disputed that his duties during his regular work week, Monday through Friday, included hauling tools and materials and transporting Foreman Kendall and members of his section gang to and from their work locations.

Sunday, May 26, 1968, Saturday, June 1, and Sunday, June 2, 1968, were Claimant's assigned rest days. On those dates the foreman operated the truck which Claimant was regularly assigned to operate. Rule 30(g) of the applicable Agreement reads:

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

The rest days of Claimant were unassigned days and in the absence of an extra or unassigned employe who had not had 40 hours of work that week, the

Claimant, as the regular employee, was entitled to be used to operate the truck. Awards 13824, 14029, 14703, 14379, 17619, among others. In those Awards the "exclusivity" defense of the Carrier was found to be without merit in work involving the "unassigned day" rule.

As to the claim for four hours on May 29, 1968, this was on Claimant's assigned work day, but outside his assigned hours. The record does not show that any effort was made to call Claimant as required by Rules 30(b) and 30(f). Under Awards 15048, 16334 and 16346, involving the same parties, the claim for four hours on this date is valid.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1970.