

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BURLINGTON NORTHERN INC.

(Formerly Chicago, Burlington & Quincy Railroad Company)

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

(1) The Carrier violated the Agreement when it failed to call and use B&B Mechanic G. F. Searle for overtime service from 7:00 A. M. to 6:00 P. M. on December 21, 1968. (System File 20-3/M-1322-69).

(2) B&B Mechanic G. F. Searle now be allowed 2½ hours' pay at his pro rata rate (travel time from 4:30 A. M. to 7:00 A. M.) and 11 hours' pay at his time and one half rate account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: B&B Mechanic G. F. Searle is senior to B&B Mechanics G. O. Leitha, R. J. Carrels, B&B Helpers R. I. LaRocque and E. W. Carney. They are all regularly assigned to B&B Gang No. 2 which was located and working at Trempealeau, Wisconsin during the period involved here. Their regularly assigned work period extends from 7:00 A. M. to 4:00 P. M. (exclusive of a one (1) hour meal period) Monday through Friday.

B&B Gang No. 1, with a regularly assigned work period identical to that of B&B Gang No. 2, was located and working sixteen (16) miles from B&B Gang No. 2 at LaCrosse, Wisconsin during the period involved here. Claimant G. F. Searle had performed relief service on the position of foreman on B&B Gang No. 1 during the vacation absence of Foreman W. C. Wojahn from December 9 through December 20, 1968. The claimant completed this assignment at 4:00 P. M. on Friday, December 20, 1968, at which time he reverted to his regularly assigned position of B&B mechanic on B&B Gang No. 2.

On Saturday, December 21, 1968, the services of B&B No. 2 were required at Dayton's Bluff, Minnesota to perform snow removal work. Junior B&B Mechanics G. O. Leitha, R. J. Carrels, B&B Helpers R. I. LaRocque

OPINION OF BOARD: This claim emerged as a result of Carrier's failure to call Claimant for emergency snow removal work on B&B Gang No. 2 on Saturday, December 21, 1968.

Claimant, whose regularly assigned duties were on said B&B Gang No. 2, relieved Foreman E. C. Wojahn of B&B Gang No. 1 while Mr. Wojahn was on vacation. The issue, which is the crux of the claim, is whether Foreman Wojahn's vacation period ended on December 20th, the final workday, as the Organization is contending, or on December 22nd, the final rest day, as the Carrier claims herein.

The Organization's position is that since Claimant completed his relief assignment at the end of the working day on Friday, December 20, 1968, he was eligible to be called for service on his own B&B Gang No. 2 for the snow removal work on December 21, 1968; that under the provisions of Rule 40(a) of the Agreement, as a senior available qualified employe he was entitled to be given preference to the overtime work; that under Rule 46(a) of the Agreement, Claimant is also entitled to travel time pay for the time he would have spent traveling from Trempealeau, Wisconsin to Dayton's Bluff, Minnesota.

Carrier's attitude in regard to this claim is that Claimant was not available for the emergency snow removal work on the date in question inasmuch as a relief employe assumes all of the conditions of the position on which he relieves, including the work days and the rest days; that Foreman Wojahn was afforded a vacation of ten consecutive working days in the two week period from Monday, December 9 to Sunday, December 22, inclusive in accord with the provisions of the National Vacation Agreement as well as the definition of a work week in Rule 32(a), which provides for a work week of five eight hour days with two consecutive days off in each seven; that under the 40-hour work week rules it would have been improper to use him on his regular position while he was still filling a vacation vacancy on the foreman's position.

The Board has been furnished a number of awards that are conflicting in the decisions reached therein in regard to the issue involved in this instance. We feel that the more reasonable conclusion to be arrived at herein is that Claimant, while on the vacation relief assignment here in question, assumed all the conditions of said position, including the rest days of the position as well as the hours of assignment and rate of pay, and thus the rest days following the five days of work became an integral part of said relief position. See Award Nos. 11763, 11920, 14324, among others.

Inasmuch as Claimant was relieving the foreman's position on B&B Gang No. 1, on the date in question he was therefore not the senior available qualified employe as contemplated by Rule 40(a) of the Agreement, and thus we are compelled to 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 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 25th day of November 1970.