

Award No. 18433
Docket No. MW-18825

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, 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 directed and required Section Foreman J. W. Crawford to assume the duties, responsibilities and work load of two positions during the vacation absence of Section Foreman G. M. Tucker. (System File 16-3/M-1343-69).

(2) Section Foreman J. W. Crawford now be allowed and additional eight (8) hours of pay at the straight time rate of Section Foreman Tucker's position for each work day from March 3 through March 28, 1969, both dates inclusive, because of the violation referred to in Part (1) of this claim.

(3) The Carrier shall also pay the claimant six (6%) percent interest per annum on the monetary allowance accruing from the initial claim date until paid.

EMPLOYEES' STATEMENT OF FACTS: Except as indicated below, the facts pertinent to the instant dispute were clearly set forth within the letter of claim presentation reading:

LETTER "A"

"April 21, 1969

16-3

Mr. I. W. Crist, Superintendent,
C. B. & Q. Railroad
Ottumwa, Iowa

Dear Sir:

Please be advised we are filing claim in behalf of Section Foreman J. W. Crawford, assigned to Section 39, Corning, Iowa, on the Creston Zone of the Ottumwa Division.

pay applicable to the Prescott Section Foreman position. Our position here is substantiated by Third Division Award 8276.

The Carrier shall also pay the Claimant six percent (6%) interest per annum on the monetary allowance accruing from the initial claim date until paid.

Very truly yours,

/s/ H. J. McWilliams
H. J. McWilliams
General Chairman

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That portion of the claim concerning the mileage allowance has been settled on the property and, therefore, it is not a part of the dispute.

The "120 hours" referred to within the eighth paragraph of the aforementioned letter is a typographical error. We are involved here with a vacation period of 20 days or 160 hours.

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: Track maintenance work on the Carrier's Chicago-Denver main line immediately west of Creston, Iowa is performed by Section Gangs headquartered at Creston, M.P. 392.94, Prescott, M.P. 406.71, and Corning, M.P. 413.66. The Creston Section Gang maintains the track within the terminal, the north and south branch lines, and the double track main line between M.P. 392 and M.P. 395. Section Gang No. 38 headquartered at Prescott maintains the double track main line from M.P. 395 to M.P. 408.25, and Section Gang No. 39 headquartered at Corning maintains the double track main line from M.P. 408.25 to M.P. 421.50.

During the period March 4 through March 28, 1969, Section Foreman Tucker from the Prescott section was absent on vacation. Since there were no qualified relief section foremen available, his position was not filled during his absence and a portion of the work he would normally perform was taken care of by the claimant herein, Section Foreman J. W. Crawford from the adjoining Corning Section Gang. The rates of pay applicable to the Foreman's positions at Prescott and Corning are identical.

The claimant was compensated at his regular rate of pay during the period of the claim, but claim is herein presented for duplicate compensation in the amount of an additional day's pay for each date that Foreman Tucker was on vacation, with interest at 6% until so paid.

OPINION OF BOARD: Section Foreman, G. M. Tucker, assigned to Section 38, Prescott, Iowa, was on vacation and Carrier assigned Section Foreman, J. W. Crawford, of Section 39, Corning, Iowa, to be responsible

for all work performed on the Prescott Section during the time Section Foreman Tucker was on vacation. 160 hours vacation time is involved, and under Section 10(b) of the National Vacation Agreement, if Claimant was assigned and performed over 25% (40 hours) on Section Foreman Tucker's assignment while Tucker was on vacation, Claimant would be entitled to an additional 8 hours of pay at the straight time rate of Section Foreman Tucker's position for each work day from March 3 through March 28, 1969, both dates inclusive. The only question involved is whether Claimant assumed more than 25% of the vacationing foreman's work load.

The Organization has computed 68½ hours time that Claimant worked on the Prescott Section. However, this Board finds that in the Organization's computation, travel time was included. Awards 10007 (McMahon), 17374 (Rambo), 6400 (McMahon), 11282 (Rose), 10761 (McGrath), 14668 (Devine), and 15061 (Ives) preclude the Organization from including travel time in such computation of the "over load" in the above quoted Section 10(b). The Board further finds, however, that excluding travel time, Claimant worked a total of 42½ hours on the vacationing Section Foreman's Prescott assignment, thereby entitling this Claimant to a sustaining award.

The Organization has also requested 6% interest per annum on the monetary allowance accruing from the initial claim date until paid. The awards are abundant to the effect that Claimant is not entitled to interest. See Awards Nos. 18312 (Devine), 6656 (Wyckoff), 13478 (Kornblum), 11172 (Coburn).

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 in accordance with the Opinion.

AWARD

Parts 1 and 2 of claim sustained; part 3 of claim denied .

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1971.