

Award No. 1690
Docket No. 1592
2-FDDM&S-EW-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 144, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)

FORT DODGE, DES MOINES & SOUTHERN
RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Linemen L. J. Struthers and Neil W. Carter and Groundmen Melvin Hitsman and Thomas H. Givens were improperly compensated for service performed away from home station from 10:00 P.M. March 17, 1951 to 3:00 P.M. March 19, 1951.

2. That accordingly the Carrier be ordered to compensate the aforesaid Linemen and Groundmen in the amount of 35 hours and 40 minutes each.

EMPLOYEES' STATEMENT OF FACTS: The employees named above, hereinafter referred to as the claimants are regularly assigned to road work and are assigned to return to the home station (Boone) daily. Their starting time is 8:00 A.M. at Boone and their quitting time is 4:00 P.M. at Boone, regardless of which point, or area, on the system they perform service. The claimants were called for emergency linework at 10:00 P.M. on March 17, 1951, and performed service from 10:00 P.M. on March 17, 1951 to 3:10 P.M. on March 18, 1951, on hi-line trouble between Boone and Des Moines. At Des Moines the carrier held them overnight, furnishing a room and meals. On March 19, 1951 the claimants performed service from 7:00 A.M. to 3:00 P.M. between Des Moines and Boone. Claimants completed service on emergency call at 3:00 P.M. on March 19, 1951. The service rendered by the claimants on this emergency call was during the period from 10:00 P.M., March 17, 1951 up to and including 3:00 P.M., March 19, 1951.

The claimants turned in time slips for continuous time figured at time and one-half for the first 16 hours and double time for the remainder; or 74 total hours each. On March 20th the timekeeper sent each of the claimants a "time slip correction notice" which reads as follows:

"Your time slip dated Mar. 17th through 19th on which you make claim for 74 total hours has been corrected to read 38 hours and 20 minutes account of rule 9—You worked from 10:00 P.M. on the 17th to 3:10 P.M. on the 18th. At the rate of time and one-half for the first 16 hours and double time after, this would figure 26 hours and

If during the time on the road, not including waiting or traveling period, a man is relieved from duty for five (5) hours or more, such relieved periods will not be paid for; provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by railroad, actual necessary expenses will be allowed. **Employees will be called as nearly as possible one (1) hour before leaving time, and on their return will deliver tools at point designated.**

Where meals and lodging are not available reasonable transportation shall be provided."

and Rule 74, reads as follows:

"RULE 74. Line Department Emergency Calls. Line department employees called for emergency work will be paid at the rate applicable to the hours in which such work is performed, with a minimum of eight (8) hours at time and one-half rates."

Therefore, this crew was paid time and one-half for the first sixteen (16) hours and double time thereafter except time relieved at Des Moines, Iowa, from 3:15 P. M. March 18 to 8:00 A. M. March 19, and were paid time and one-half for the next eight (8) hour period or twelve (12) hours for being used on a day of rest.

POSITION OF CARRIER: The facts in this case are that these men were called for 10:00 P. M. the night of March 17 because of breaks in the high tension lines, which come under their classification of employment, and during the night a severe blizzard covered the entire line, these men became snowbound, and we were unable to get them into a place of shelter until 3:15 P. M. the afternoon of March 18. They were taken to the North Western Hotel in Des Moines, where all of their expenses were paid by the railway company, both food and lodging, and they were called the next day, March 19, at 8:00 A. M., and were brought to Boone and tied up at 3:15 P. M. March 19, and were paid twelve (12) hours for this call. This crew was paid a total of 38 hours 20 minutes, which the company feels is all the contract demands.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and the evidence, finds that:

The carrier or carriers and the employ or employees involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

Claimants were regularly assigned to road work under the electrical workers agreement. Their starting time is 8:00 A. M. at Boone, Iowa, and their quitting time is 4:00 P. M. at the same point, regardless of the area on the system where they perform service. On March 17, 1951, claimants were called for emergency linework resulting from a bad storm at 10:00 P. M. and performed service until 3:10 P. M. on March 18, 1951, between Boone and Des Moines. They were held overnight at Des Moines, the carrier furnishing meals and lodging. On March 19, 1951, claimants performed service from 7:00 A. M. to 3:00 P. M., at which latter hour the emergency service was completed. Carrier paid for sixteen hours at time and one-half rate and one hour and ten minutes at double time for work performed on March 17 and 18. Claimants were paid for eight (8) hours at time and one-half on March 19, it

being their rest day. This is equivalent to a total of thirty-eight (38) hours and twenty (20) minutes at the straight time rate. The organization contends that they are entitled to be paid for all hours they were away from Boone, the same being the equivalent of seventy-four (74) hours at the straight time rate.

The organization contends that the claims are payable under Rule 10. The carrier insists that Rules 9 and 74 are the controlling rules. Claimants are employees regularly assigned to road work and who are assigned to return to the home station each day. They are, therefore, assigned and paid under the provisions of Rule 10. This rule provides that they shall be paid from the time of leaving the home station to the time they return whether working, waiting, or traveling, exclusive of the meal period. No exceptions are made in this rule other than that relating to the meal period. It provides for overtime for all overtime hours at home station. The rule is complete and provides the method of payment to employees regularly assigned to road work and assigned to return to the home station daily.

Carrier asserts that Rule 9 is the controlling rule and that it authorizes relief periods of five hours or more without pay therefor. We point out that Rule 9 applies to employees assigned to a given point who are called for emergency road service away from the home point. Claimants were not such employees. They are employees assigned under Rule 10 and are governed by the provisions of that rule. Rule 9 has no application to them.

Carrier urges, however, that Rule 74 controls. This rule provides: "Line department employees called for emergency work will be paid at the rate applicable to the hours in which such work is performed, with a minimum of eight (8) hours at time and one-half rates." The contention that this rule supersedes either Rule 9 or 10 is not a tenable one. Rule 9 is an emergency road service rule dealing with a designated class of employees and is special and controlling over the line department emergency call rule (Rule 74). Rule 10 likewise deals with a designated group of employees, determines the hours for which they shall be paid and is special and controlling over the general provisions of Rule 74. It makes no provision for relief periods during emergency service as was done in Rule 9. If such had been the intent it would have been a simple matter to have said so. Fairly construed, the words, "will be paid at the rate applicable to the hours in which such work is performed" require an examination of Rule 10, the rule under which these claimants were **assigned, to determine the rate applicable to the hours in which such work is performed.** It is then argued that if this be true that Rule 74 has no efficacy whatever, as all employees are either assigned under Rule 9 or Rule 10. Assuming that this is true, Rule 74 must necessarily be construed to apply to extra, unassigned and furloughed employees called into emergency service.

Claimants are entitled to be paid continuous time from the time of leaving the home station to the time they return, even though they are engaged in emergency service. A sustaining award is required.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1953.