

Award No. 1421
Docket No. 1364
2-CB&Q-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES'
DEPARTMENT A. F. of L. (Carmen)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1) That under the current agreement, the carrier improperly compensated Carmen Nick Guddendorf, W. P. Michaels, G. A. Smith, H. C. Landorf, David Murphy, V. M. Sustarsek and L. R. Kessler from 12 o'clock Midnight, August 31, 1949, to 8 A.M., September 1, 1949.

2) That accordingly, the carrier be ordered to additionally compensate each of these employes in the amount of the difference between what they received and the amount to which they were entitled.

EMPLOYES' STATEMENT OF FACTS: The employes named in the foregoing statement of claim and hereinafter referred to as the claimants, constitute the carrier's regularly assigned wrecking crew at Eola, Illinois. Their regularly assigned hours on the repair track thereat were from 8 A.M. to 12 Noon and 12:30 P.M. to 4:30 P.M. on August 31 and September 1, 1949.

At 5:10 P.M., August 31, 1949, the wrecking outfit accompanied by the claimants was dispatched to a wreck at or near Spring Valley, Illinois. They arrived at the scene of the wreck at 9:30 P.M. immediately started clearing the wreckage and completed the work at 3:30 A.M., September 1, 1949. The outfit and claimants departed at 4:10 A.M. and arrived at their home point at 8:15 A.M., September 1, 1949. For this service claimants were compensated on the basis of the rate of pay in effect August 31, 1949.

This dispute has been handled in accordance with the agreement effective September 1, 1949 up to and including the highest carrier officer designated to handle such matters with the result that this officer has declined to make any satisfactory adjustment.

POSITION OF EMPLOYES: There is no dispute concerning the amounts claimants received for services rendered up to 12 o'clock Midnight, August 31, 1949, nor is the method of payment from 12 Midnight, August 31, 1949 to 8 A.M., September 1, 1949, in dispute. It is submitted that within the meaning of Rule 84 of the controlling agreement reading in pertinent part:

"... the provisions of this agreement shall become effective September 1, 1949" (Emphasis supplied.)

2. Without detracting in the least from the above position, this claim is totally without merit and should be denied because:

- (a) It is a well-recognized practice on this property that payments should be credited to the day on which service begins.
- (b) All member organizations of System Federation No. 95, Railway Employees Department, A. F. of L., including the Brotherhood of Railway Carmen, paid allegiance to this practice by their acquiescence in the payments as made by the carrier to employees who worked the night of August 31-September 1, 1949.
- (c) Claimants began the wrecking service here in dispute at 4:00 P. M. on August 31, they were paid overtime based on the rates effective that day, and nothing more is due them.

In view of these facts, there is no basis, contractual or otherwise, upon which to support the claim herein contained and it should therefore be denied.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The agreement effective September 1, 1949, upon which the employees rely, is not applicable to the instant overtime service. The instant service was rendered by the claimants pursuant to the overtime provisions of the agreement in force on August 31, 1949, and, since the claimants were paid in accordance with Rule 9 (e) of said agreement, they were properly paid up to 8 A. M., September 1, 1949. In these circumstances it is unnecessary to determine whether the facts establish that the claim is barred by the provisions of Rule 29 of the agreement.

AWARD

Claim denied per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1951.