

Award No. 579

Docket No. 571

2-B&M-EW-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: George Oldford, leading electrician, electrical crew, Boston, should be paid four (4) hours for service performed 6:40 A. M. to 7:30 A. M., February 15, 1940, under the provisions of Rule 4 instead of what he received.

JOINT STATEMENT OF FACTS: There is in effect an agreement between System Federation No. 18 and the Boston and Maine Railroad, which became effective April 1, 1937. This agreement covers the electrical crew in the engineering department, as well as numerous other employees in the maintenance of equipment, maintenance of way and stores departments. Rules 4, 7 and 11 of the agreement of April 1, 1937 read:—

"Rule 4. Emergency Service. (a) For continuous service after regular bulletin hours, employees will be paid time and one-half on the actual minute basis with a minimum of one (1) hour for any such service performed.

(b) Employees shall not be required to work more than two (2) hours overtime without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes.

(c) Employees called or required to report for work and reporting but not used, will be paid a minimum of four (4) hours at straight time rates.

(d) Employees called or required to report for work and reporting will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less, and will be required to do only such work as called for or other emergency work that is necessary to meet service requirements.

(e) Employees will be allowed time and one-half on minute basis for service performed continuously in advance of the regular working period with a minimum of one (1) hour, the advance period to be not more than one hour.

(f) Except as otherwise provided for in this rule, all overtime beyond sixteen hours of service in any twenty-four hour period, computed from starting time of employee's regular shift, shall be paid for at the rate of double time."

The signer of this submission for the employes was not present at all the conferences when what are now Rules 4, 7 and 11, were discussed and agreed to. The signer for the management was, and assisted in making the rules.

The management cannot properly, and does not attempt to, regulate where members of this crew reside. The fact that Oldford lived in Lexington, which the employes state is twelve (12) miles from Boston, but timetable distance is eleven (11) miles, has really no connection with the case and is evidently injected for the purpose of exciting sympathy.

The Board should not confuse Rules 4 and 11 of agreement of April 1, 1937, with Rule 10, or others, of so-called National Agreement. They are not the same.

The Board is asked to interpret the rules of Boston and Maine agreement, not any other, especially where the rules are different.

Should a member of this electrical crew be called outside regular hours of duty and perform service in an emergency, and was not continuous with before or after regular hours, we would compensate him under Rule 4 (d), but when the overtime is continuous with, and in advance of, regular work period, as in this case, there should be no question as to last paragraph of Rule 11 covering.

We submit as carrier's Exhibit A, copies of rules mentioned in joint statement of facts as first presented by representatives of System Federation No. 18, when they gained right to represent shopmen on Boston and Maine Railroad and against those, the rules of present agreement, and call attention of members of the Board to the marked difference between what was proposed and what was finally agreed to.

As carrier's Exhibit B, we submit statement showing work performed by Mr. Oldford for two weeks before and after date of this claim.

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

The carrier or carriers and the employe or employes 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.

Rule 11 reads as follows:

"Employees regularly assigned to road work shall when away from headquarters (a boarding car to be considered headquarters), be paid continuous time from the time of leaving headquarters, to the time they return, whether working, waiting or traveling, exclusive of time allowed for meals as follows:

Straight time rate for work performed during regular hours and for all time traveling and waiting.

Time and one-half for the first eight (8) hours of work performed after the close of the regular day.

Double time rates for work performed after the sixteenth (16th) hour of service in any twenty-four hour period computed from the regular starting time.

Employees on regular assigned road work shall be paid at overtime rates for work performed continuously with and in advance of the regular work period."

The rule therefore provides for payment "When away from headquarters." While Electrician Oldford was "regularly assigned to road work," he was not "away from headquarters" when called for emergency duty at the Boston Terminal on February 15, 1940, and is therefore entitled to payment under the provisions of Rule 4.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 6th day of March, 1941.