

Award No. 700

Docket No. 702

2-B&M-EW-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES: Antonio Rea should have been paid under the provisions of Rule 11, agreement of April 1, 1937, between above parties, for service at Lakewood, New Hampshire, April 23, 24, 25 and 26, 1941, and return to Boston, Massachusetts. Rule 2 was not complied with; Rule 10 is not involved.

JOINT STATEMENT OF FACTS: Antonio Rea is an electrician and regularly assigned to road service with headquarters at Boston, Massachusetts.

His regular bulletined hours are 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M. six days per week.

On April 21, 1941, a railroad bridge at Lakewood, New Hampshire was so severely damaged by fire that through traffic on an important branch line was indefinitely suspended pending rebuilding.

Antonio Rea was sent to Lakewood, New Hampshire the morning of April 22, to install and maintain emergency electrical equipment including flood lights.

Bridge repair crews were assigned on continuous service basis—two 12-hour shifts starting at 6:00 A. M. and 6:00 P. M. respectively.

On April 23, an additional electrician was assigned to cover the 6:00 A. M. to 6:00 P. M. shift and Rea was instructed to cover the 6:00 P. M. to 6:00 A. M. shift until repairs were completed.

Repairs on bridge were completed April 26, and Rea returned to Boston on the same date.

No conference was held with committee in connection with making these arrangements.

POSITION OF EMPLOYES: Antonio Rea, regularly assigned road electrician was sent to Lakewood, New Hampshire on April 22, 1941, to install and maintain electric lighting while repairs to bridge were made. On April 23, Rea was advised that he was to work from 6:00 P. M. to 6:00 A. M. Rea's regular starting time and working hours are 8:00 A. M.-12:00 Noon and 12:30 P. M.-4:30 P. M. Rule 2 provides, in part: "The starting time of any shift shall be arranged by mutual understanding between the local officers and the employes' committee based on actual service requirements." The management made no effort to comply with this rule, did not seek conference with the local committee, or any member of the local committee, for the purpose of establishing a new shift, or regulating the starting time of

Rule 11 covers overtime of men regularly assigned to road work. Antonio Rea was regularly assigned to road work. The second, third and fourth paragraphs of Rule 11 all refer to payments for "work performed" and no part of Rule 11 guarantees men any pay for work not performed. Rea was paid for all the work which he performed and for his waiting and traveling time and there is absolutely no warrant in Rule 11 or in any other rule of the agreement for paying him for his regular hours of duty during which he performed no service April 23, 24 and 25, 1941.

Rule 10 provides that employes changed from one shift to another for the convenience of the railroad will be paid overtime rates for the first shift of each change. While it was not in the minds of the framers of this rule when it was negotiated in 1937 that where a member of the electrical crew had to work a night job instead of his regular hours under emergency conditions such as existed in this case, it might be argued that the literal interpretation of the rule would give Rea time and one-half for the first trick that he worked from 6:00 P. M. to 6:00 A. M., which was April 23, and, as shown in employes' Exhibit A, the management stated to the representative of the employes that if the entire claim could be closed by our paying Rea 12 hours at time and one-half from 6:00 P. M., April 23, until 6:00 A. M., April 24, instead of 8 hours at straight time and 4 hours at time and one-half for that period, we would authorize such payment.

The time that Rea was at Lakewood, New Hampshire was in two different payroll weeks and his earnings as shown in employes' Exhibit A for those two weeks were \$123.20 and what we offered would give him \$3.44 more.

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 waived right of appearance at hearing thereon.

The **Joint Statement of Facts** shows that:

"Antonio Rea is an electrician and regularly assigned to road service with headquarters at Boston, Massachusetts.

His regular bulletined hours are 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M., six days per week.

On April 21, 1941, a railroad bridge at Lakewood, New Hampshire, was so severely damaged by fire that through traffic on an important branch line was indefinitely suspended pending rebuilding.

Antonio Rea was sent to Lakewood, New Hampshire, the morning of April 22nd to install and maintain emergency electrical equipment including flood lights.

Bridge repair crews were assigned on continuous service basis—two 12-hour shifts starting at 6:00 A. M. and 6:00 P. M., respectively.

On April 23rd an additional electrician was assigned to cover 6:00 A. M. to 6:00 P. M. shift and Rea was instructed to cover the 6:00 P. M. to 6:00 A. M. shift until repairs were completed.

Repairs on bridge were completed April 26th and Rea returned to Boston on the same date.

No conference was held with Committee in connection with making these arrangements.”

Rule 11 reads:

“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 rates 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 (24) hour period computed from the regular starting time.

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

There is no dispute between the parties as to the facts shown above. Rule 11, also quoted in the foregoing, provides the method of payment.

AWARD

Electrician Antonio Rea shall be paid in accordance with the provisions of Rule 11.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 29th day of January, 1942.