

Award No. 1005

Docket No. 943

2-C&NW-MA-'44

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(a) That Machinist Robert Abell and Machinist Helper D. LaRocco be compensated four hours each for work performed from 5:00 A. M. to 6:00 A. M., July 27, 1942, under the controlling agreement.

(b) That Machinist Robert Abell and Machinist Helper D. LaRocco be allowed one hour preparatory time at straight time rate under the controlling agreement for being required to leave home station during overtime hours.

JOINT STATEMENT OF FACTS: Robert Abell, machinist, and D. LaRocco, machinist helper, regularly assigned as such at Chicago Avenue enginehouse, Chicago, Illinois, 8:00 A. M. to 4:00 P. M. Machinist Abell and Helper LaRocco were notified to report at 5:00 A. M. Monday, July 27, 1942, to depart at 6:00 A. M. for the purpose of resetting tires on engine 1578 at Zion, Illinois, a point approximately forty-two miles from Chicago. Machinist Abell and Helper LaRocco reported at Chicago Avenue enginehouse at 5:00 A. M. July 27, 1942, and performed the following service in connection with getting tools and supplies together to take with them to perform work in connection with tire setting:

They filled tire setting equipment fuel tank and extra containers with kerosene oil, secured tire shims from storehouse, then loaded the tank, extra cans of kerosene oil, tire heating burner, hoses, jack, tire shims and other tools necessary for resetting tires on top of water tank of engine 927 which work consumed approximately one hour.

They departed Chicago Avenue enginehouse at approximately 6:00 A. M. on engine 927, proceeded to Zion, Illinois, where they reset two tires on engine 1578, returned to the enginehouse at 4:30 P. M., unloaded tools and were relieved from duty at or about 5:00 P. M. For service performed Machinist Abell and Helper LaRocco were allowed pro rata rates 5:00 A. M. to 4:30 P. M. and rate and one-half 4:30 P. M. to 5:00 P. M.

of the agreement not being supported under the accepted interpretation of the rules involved must necessarily be declined.

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.

There can be no question that the provisions of Rule 7 and Rule 10 of the controlling agreement at issue in this proceeding were designed to cover separate and distinct situations. Rule 7 provides a method of payment for overtime work, other than Sunday or Holiday work, performed at the shops. Rule 10 provides a method of payment for emergency road work. Under Rule 7, "employes called or required to report for work and reporting will be allowed a minimum of four hours for two hours and forty minutes or less." Under Rule 10, employes called for emergency road work "will be paid from the time ordered to leave home station"; they "will be called as nearly as possible one hour before leaving time"; and "if required to leave home station during overtime hours, they will be allowed one hour preparatory time at straight-time rate."

There is no dispute in this proceeding as to the method of payment used for the emergency road work proper—that is, for the work performed after the claimants left their home station. The controversy relates to the work performed in advance of leaving time. Concretely, the issue involved is whether the claimants are entitled to be paid for the one hour's work thus performed by them under the preparatory-time provision of Rule 10, as contended by the carrier, or under the "call" provision of Rule 7 plus the preparatory-time provision of Rule 10, as contended by the employes.

The carrier purported to call the claimants for emergency road work under Rule 10, and they were in fact used for emergency road work after 6:00 A. M., when they were ordered to leave their home station. If they had merely been called for 6:00 A. M., such incidental work as they might have performed before leaving time would have been properly compensated through the one-hour preparatory-time arbitrary provided for in Rule 10.

In point of fact, however, the claimants were not merely called at 5:00 A. M., in conformity with the appropriate provision of Rule 10, but were ordered to report for work at 5:00 A. M.; and they actually did work between 5:00 A. M. and 6:00 A. M. In these circumstances the fact that the work performed by them was related to the emergency road work is immaterial. They are entitled to be paid for the "call" to perform this overtime work, and Rule 7 provides the measure of compensation to which they are entitled.

In this view of the situation, however, there is no sound or fair basis for allowing them, in addition, the one-hour preparatory-time arbitrary specified in Rule 10. Since they are entitled to compensation for a "call" under Rule 7, the call and preparatory time under Rule 10 are thereby eliminated. In other words, at 6:00 A. M., when they were ordered to leave the home station, they were already on the property, having just completed the work entailed by the "call" for which they are entitled to be paid under Rule 7. In absence of the call and preparatory time incident thereto under Rule 10, the fact that

they were required to leave their home station during overtime hours becomes immaterial.

AWARD

Paragraph (a) of claim is sustained; paragraph (b) of claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of March, 1944.