

Award No. 1381
Docket No. MC-1318-63

2-P&LE-LE&E-I-'50

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**UNITED RAILROAD WORKERS OF AMERICA, C.I.O. (Merged
with Industrial Union of Marine and Shipbuilding Workers of
America, C.I.O.)**

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That within the meaning of the controlling agreement and particularly Rule 3 (a) and Rule 4 employes who work less than 40 minutes overtime and are paid one hour straight time rates are being unjustly dealt with by the carrier in declining to pay employes the minimum of one hour at overtime rate.

EMPLOYES' STATEMENT OF FACTS: Employes of the carrier are required from time to time to work continuously overtime for a period of time less than forty (40) minutes. At the McKees Rocks yard of the carrier, shortly after May 1, 1948, the carrier discontinued paying employes so affected one hour at punitive rate for such minimum overtime (less than 40 minutes of work).

It had been the practice at the majority of points of this carrier prior to May 1, 1948, to pay employes who worked less than forty (40) minutes, one hour punitive rate.

May 1, 1948, a new agreement was made effective with the carrier covering the carmen craft and is controlling.

POSITION OF EMPLOYES: That Rule 3 (a) and Rule 4 of the agreement between the Pittsburgh and Lake Erie Railroad Company and Lake Erie & Eastern Railroad Company and the United Railroad Workers of America, CIO, effective May 1, 1948, is being violated when employes work less than forty (40) minutes overtime (continuous) and are paid one (1) hour straight-time rate.

Rule 3 (a) reads as follows:

"Overtime

(a) All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out."

Rule 4 reads as follows:

practice is uncontroverted and must control if it be determined that a decision in this case rests on a construction or interpretation of Rule 4 "Emergency Service."

CONCLUSION:

The carrier's position in this case may be summed up as follows:

1. The statement of employes' claim, reading "* * * shall employes who are required to work continuous overtime be paid a minimum of one hour at overtime rates?" falls squarely within the language of Paragraph (a) of Rule 3, "Overtime", which reads:

"(a) All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out."

Accordingly, in the specific claim progressed on the property the employes would be entitled to nine minutes' pay for the six minutes' delay.

2. Since no emergency situation was discussed in the conferences on this claim, and since no showing of an emergency is made in the statement of employes' claim except inferentially by recital of Rule 4, "Emergency Service", Rule 3 (a) must control in the instant case. To hold otherwise would render Rule 3 (a) meaningless.

3. Even if it were determined that the first paragraph of Rule 4, "Emergency Service", were controlling in the instant case (which position the carrier contends is entirely unwarranted) a careful reading of the first paragraph of rule 4 discloses that the words "a minimum of one hour" mean "a minimum of one hour at pro rata rate." Since the words "at punitive rate" are not expressed in paragraph 1, a fair construction of the rule should not imply the penalty.

4. If the first paragraph of Rule 4 should be considered ambiguous, the only evidence submitted in this case which might furnish a guide as to the proper interpretation of the rule is that of the recognized and established practice of paying employes one hour at pro rata rate for work performed continuous with regular working hours, not exceeding forty minutes; however, if carrier's contention that Rule 3 (a) is controlling is sustained, neither the past practice of payment in similar cases nor carrier's offer of settlement in the instant case on the basis of that past practice would govern. In other words, carrier's position in this case is premised on a proper application of the clear and unambiguous language of Rule 3 (a); and what has been argued in carrier's position with reference to Rule 4 and its interpretation is presented only if this Division deems that Rule 4 is pertinent to the issue here presented.

It is therefore respectfully submitted that the claim must 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 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 4 of the controlling agreement provides "For continuous service after regular working hours, employes will be paid time and one-half on the

actual minute basis, with a minimum of one hour for any such service performed."

In the instant case there does not appear to be any violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of April, 1950.