

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—(Firemen & Oilers)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That under the current agreement Engine Watchmen E. S. McTheny, I. G. Olson and Gilbert Clemans have been unjustly dealt with by the refusal of the carrier to properly compensate them for their services in excess of eight (8) hours per day from October 16 to December 31, 1949.

2—That accordingly the carrier be ordered to additionally compensate these employes in the amount of four (4) hours each at the rate of time and one-half for the services which they performed on each day of assignment covered in the aforesaid period.

EMPLOYEES' STATEMENT OF FACTS: At Woodinville, Washington the carrier employed three (3) engine watchmen during the period of October 16 through December 31, 1949, with assignments as follows:

- a) I. G. Olson, from 4:00 A. M. to 4:00 P. M. without any relief period defined, Wednesday through Sunday with rest days Monday and Tuesday.
- b) E. S. McTheny, from 4:00 P. M. to 4:00 A. M. without any relief period defined, Friday through Tuesday with rest days Wednesday and Thursday.
- c) Gilbert Clemans, from 4:00 A. M. to 4:00 P. M. Monday and Tuesday; from 4:00 P. M. to 4:00 A. M., Wednesday and Thursday without any defined relief period, and as a laborer on Friday from 8:00 A. M. to 4:00 P. M., with rest days Saturday and Sunday.

During the period of this dispute the carrier regularly serviced at this point two steam locomotives, one a local freight engine and the other a helper engine. The local freight engine operated daily out of the point and it had to be serviced every weekday night including Saturday evenings through Mondays until about 8:00 A. M. every Monday morning, where as the helper engine was only used to help trains when required. This engine was subject to depart and return at any time, thus these engine watchmen were responsible for the safe keeping and the readiness of this engine to operate practically twenty-four (24) hours per day, seven (7) days per week.

one interval of release of not less than two hours' duration, exclusive of the meal period. Overtime will be paid at the rate of time and one-half for all time worked in excess of eight hours within a spread of twelve hours and also for all time in excess of twelve hours computed continuously from the time first required to report until final release."

Rule 4 (a) simply provides that certain positions, including positions of engine watchmen, may be assigned on the basis of eight or more hours within a spread of twelve hours provided that there shall be but one interval of release of not less than two hours' duration exclusive of the meal period. In the application of Rule 4 (a) an engine watchman's position may be assigned on the basis of eight or more hours within a spread of twelve hours without assigning a definite release period as there is nothing in that rule that requires the designation of the release period.

Rule 4 (a) neither by direction nor by implication, provides for the assignment of a definite release period to an engine watchman assigned to work on the basis of eight or more hours within a spread of twelve hours. Rule 4 (a) may be searched in vain for a provision to the effect that a definite release period must be assigned to a position of engine watchman established pursuant thereto.

Rule 4 (a) also provides that overtime will be paid at the rate of time and one-half for all time worked in excess of eight hours within a spread of twelve hours and also for all time in excess of twelve hours computed continuously from the time first required to report until final release. It is significant to note that time worked in excess of eight hours within a spread of twelve hours is paid for at time and one-half rate. Time not worked in excess of eight hours during the spread of twelve hours is not paid for in the application of Rule 4 (a), and this conclusion is corroborated by the plain language of that rule.

There is no dispute in this docket that Engine Watchmen McTheny, Olson and Clemans availed themselves of a four-hour release period during the spread of twelve hours. Neither do the employes contend that these engine watchmen remained on duty in excess of eight hours during the spread of twelve hours. These engine watchmen availed themselves of a release period of four consecutive hours during the spread of twelve hours, remaining on duty eight hours during the spread of twelve hours. Therefore, in the application of Rule 4 (a) the claim covered by this docket cannot be sustained.

The carrier has shown that in filling the positions of engine watchmen at Woodinville, Washington, Engine Watchmen McTheny, Olson and Clemans performed eight hours' service within a spread of twelve hours. The carrier has also shown that in the application of Rule (a) the assignment of a definite release period is not mandatory. Furthermore, the carrier has shown that Rule 4 (a) by its specific terms does not provide for payment of time that is not worked in excess of eight hours during the spread of twelve hours.

Claim covered by this docket should 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.

If it be determined by joint investigation by representatives of the Carrier and the Employes that one or more of the claimants actually worked, on any date involved in this claim, in excess of eight (8) hours within the spread of twelve (12) hours of his (their) assignment, the claim is sustained for the amount of excess time each claimant thus worked.

AWARD

Claim disposed of per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February, 1951.