

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**Third Division**

Arthur M. Millard, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**  
**ERIE RAILROAD COMPANY**

**STATEMENT OF CLAIM.—**

"Claim of J. D. Atkin for the difference in pay between straight time rate and time and one-half rate for thirty-five (35) minutes account of operating a track motor car after his regular working hours on January 15, 1936."

**STATEMENT OF FACTS.—**In their ex parte submission the employees stated the facts as follows:

"J. D. Atkin is a signalman receiving \$24 per hour. His headquarters is a camp outfit and his duties require him to work on the line, leaving and returning to headquarters each day. Normally the distance he works from his camp outfit is only a comparatively few miles.

"Atkin is assigned to signal repair work and is in charge of a track motor car which is used to transport himself, tools, material, and equipment to and from his headquarters.

"On January 15, 1936, Atkin worked 35 minutes overtime (operating track motor car) returning to headquarters with tools, material, and equipment, for which he was compensated at the straight time rate.

"There is in evidence an agreement between the parties bearing effective date of Nov. 1, 1935. The following rules thereof have been cited:

"**RULE 12.** The hourly rates named herein are for an eight (8) hour day. All service performed outside of the regularly established working period shall be paid for as follows:

"Overtime hours either prior to or continuous with regular working period shall be computed on the actual minute basis and paid for at the rate of time and one-half.

"Employees will not be required to work more than ten (10) hours without being permitted to take a second meal period. Such second meal period will be paid for and shall not be in excess of thirty (30) minutes.

"**RULE 18.** Employees regularly assigned to perform road work will be paid continuous time, exclusive of meal period, from time when required to report until they return as follows:

"(A) Time traveling and waiting, going to point of beginning work, and returning from point of ending work at one-half ( $\frac{1}{2}$ ) regular rates, except that full regular rate will be paid for traveling on track motor cars.

"(B) Work performed at point designated, straight time for first eight (8) hours, and time and one-half thereafter.

"(C) Total allowance for a day under the provisions of this rule shall not be less than eight (8) hours at straight time rates.

"(D) When the requirements make the purchase of meals and lodging necessary while away from home location, employees will be paid actual necessary expenses only when not returning to home location daily. This rule will not apply to midday meals the first day."

**POSITION OF EMPLOYEES.—**The employees contend that Mr. Atkin should have been compensated at the rate of time and one-half for the time he performed service of operating a track motor car 35 minutes beyond his established working period on January 15, 1936. This contention is based on and supported by Rules 12 and 16 of Article 2 of the agreement dated Nov. 1, 1935.

Mr. Atkin being in charge of the motor car and its safe operation, and responsible for the tools, equipment, and material thereon, was performing a service as defined in the first paragraph of Rule 12 outside of his regularly established working period.

The second paragraph of this rule recognizes that such service is overtime hours and shall be paid for at the rate of time and one-half. Thus Atkin should have been paid at the rate of time and one-half for the 35 minutes beyond his regular working period that he performed the service of operating the track motor car January 15, 1936.

The employees further contend that paragraph (A) of Rule 16 was intended to and does in fact provide time and one-half for all time beyond the regular working hours while riding on track motor cars. The "Full regular rate" for riding on motor cars provides that riding on track motor cars during the regular working hours will be paid for at the straight time rate and traveling on track motor cars after the regular working hours will be paid for at the full regular overtime rate—the full overtime rate is time and one-half.

**POSITION OF CARRIER.**—The claimant, J. D. Atkin, is a signalman working with a signal construction gang whose headquarters is a signal camp outfit, from and to which he goes to engage in work at various nearby locations. On January 15, 1936, seven of the nine men including the foreman were working at Amasa, Pa., nine miles west of Transfer, Pa., where the camp car was located. Upon the completion of work that day some of the men returned to the camp cars on their motor car. On account of waiting for an eastbound freight to pass they were delayed and did not arrive at their camp cars until 5:05 P. M. or 35 minutes after the usual quitting time.

**OPINION OF BOARD.**—In this claim of J. D. Atkin for the difference in pay between straight time rate and time and one-half rate for a period of thirty-five (35) minutes on account of operating a track motor car after his regular working hours on January 15, 1936, several discrepancies and differences are noted. Among these is this statement that the time slip issued for the men involved on the date in question, January 15, 1936, shows no indication of any earned overtime, and this is reconciled by the statement of the carrier that such overtime as accrued on January 15 was later reported by the Foreman on his time slip for January 29. Other differences noted are the unreconciled statements with respect to the operation of the motor car and the responsibility for the care of the tools and equipment at the conclusion of the trip on the date that the overtime was actually earned.

Both parties to this claim quote the several provisions of Rules 12 and 16 of the agreement between the parties, effective November 1, 1935, as supporting their separate contentions.

Rule 12 is designated as the "Overtime" rule and provides for all service performed outside of regularly established working periods. Rule 16 provides for service performed on assigned road work and paragraph (A) excepts from the payment of the full regular rate and overtime, the time of employees waiting and traveling to and from the point of their assigned work; with the further exception however that full regular rate will be paid for traveling on track motor cars.

In the proper interpretation of Rule 16, paragraphs (A) and (B), there is a decided difference in the application of these paragraphs. In the first instance, paragraph (A) is assigned to cover a period of time in which the employee is either traveling to or from the point of his assigned work, and during which no work is done or responsibility assumed. Paragraph (B) however covers a period in which work is actually performed and responsibility is actually assumed and for which time and one-half is paid for all time put in by the employee after the first 8 hours at the designated point at which the work is performed.

Under the circumstances outlined in this instant case where work is performed and responsibility is assumed, as in the operation of a motor car, the transporting of other employees, the care of tools and equipment, the responsibility for the proper application of the rules and requirements of safety, and the laying up or putting away of the car, paragraph (B) of Rule 16 would not apply to work performed and responsibility assumed away from the point at which the work is designated; and such overtime as was put in by the employee involved should be paid under the overtime provisions of Rule 12.

Considering the unreconciled differences existing between the parties, while under the circumstances involved, the Board is of the opinion that claimant Atkin actually performed the work upon which this claim is based, it is recom-

mended that the parties reconcile the contradictory statements as to the operation of the motor car and for the responsibilities involved before taking action on the principle on which the award is rendered, insofar as it affects this claimant.

**FINDINGS.**—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That in view of the facts in evidence the employe is entitled to the application of the overtime clause of Rule 12 of the agreement, provided that the contradictory statements as to the operation of the motor car are reconciled in favor of the claimant.

#### AWARD

Claim sustained insofar as the principle involved is concerned, but remanded for an adjustment of contradictory statements as outlined in the concluding paragraph of the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary*

Dated at Chicago, Illinois, this 26th day of August, 1937.