

NATIONAL RAILROAD ADJUSTMENT BOARD  
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

FLORIDA EAST COAST RAILWAY

(W. R. Kenan, Jr., and S. M. Loftin, Receivers)

STATEMENT OF CLAIM.—

"(a) Are Draw Bridge Tenders entitled to pay under provision of Rule 19 of existing agreement effective April 12, 1932, and supplement to this rule effective July 1, 1935, for time they are required to remain in the vicinity of the bridge to which assigned during the twelve (12) hour period in which their tour of duty is assigned?

"(b) Compensation for difference in wage received and that which they should have received as enumerated in (a), July 1, 1935, to date."

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

"An agreement exists between the Florida East Coast Railway, W. R. Kenan, Jr., and S. M. Loftin, as Receivers, and the Employes represented by the Brotherhood of Maintenance of Way Employes. The effective date of this agreement being April 12, 1932 and supplement to Rule 19 thereof, effective July 1, 1935. Rule 19 of the agreement reads: (Supplement effective July 1, 1935):

"REVISION OF AGREEMENT BETWEEN FLORIDA EAST COAST RAILWAY, W. R. KENAN, JR., AND S. M. LOFTIN, AS RECEIVERS AND EMPLOYES REPRESENTED BY BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES, DATED APRIL 12, 1932

"It is agreed that effective July 1, 1935, Rule Nineteen (19) is revised as follows:

"HOURS OF SERVICE

"(a) The basic working day shall consist of eight (8) hours, exclusive of meal period, the hours of such service to be fixed by the party of the first part between Six A. M. and Six P. M., except as herein below provided. Employes will be allowed to work the ninth and tenth hour at pro rata rate at the discretion of the Management. Working hours will include the time consumed in going to and from work. Punitive overtime shall begin after the tenth hour of continuous service. If, in the opinion of the Management the service demands, Bridge Tenders, Assistant Bridge Tenders, and Pumpers may be required to perform eight (8) hours duty within a twelve (12) hour period. Where three shifts of Bridge Tenders are employed in continuous service, the starting time of the first shift will be between the hours of Six A. M. and Eight A. M.; the second shift between Two P. M. and Four P. M., and the third shift between Ten P. M. and Midnight. Where less than three shifts of Bridge Tenders are worked they may be started at any time.

"(b) Employes called to perform work not continuous with the regular assignment, will be paid for the actual time worked at time and one-half time, with a minimum allowance of two (2) hours. With the exception of Pumpers, Drawbridge Tenders and their Assistants, time worked on Sundays and the following holidays, New Year's Day, Washington's Birthday,

construction upon the rule that was not intended by the contracting parties, or an effort to change the rule without following the usual orderly processes of negotiating rule changes."

#### OPINION OF BOARD.—

The subject at issue in this claim is whether draw bridge tenders employed by the Florida East Coast Railway are entitled to pay over the established monthly rate, under the provisions of an agreement between the parties, effective April 12, 1932, and supplement to Rule 19 of the agreement, effective July 1, 1935, for the time they are required to remain in the vicinity of the bridge to which assigned during the twelve (12) hour period in which their tour of duty is assigned; and whether these employes are entitled to compensation for difference in wages between those received and those which it is alleged they should have received from July 1, 1935, to date.

A review of the issues of this controversy indicates that the subject presented has been one of long standing between the employes and the carrier, and that Rule 19 was adopted and put in effect on July 1, 1935, as a means of clearing up the differences between the parties. However, little or no action was taken on the subject at issue between the time when Rule 19 of the agreement was revised and this claim was presented for adjustment or decision.

Considering Rule 19 and the application that has been made, the basic working day in this as in other rules of agreements between employes and carriers, consists of eight (8) hours, exclusive of meal periods. In the intermittent character of service required from draw bridge tenders, as in this instant case, the fact is conceded that split trick assignments will at times be necessary to meet the requirements of both the carrier and the public. At the same time, the Board submits that in the proper interpretation of the term "split trick assignments," these are assignments in which a specific number of hours are divided and alternated between working and leisure hours at designated intervals and within the period specified. In the conditions applying in this case, when employes are compelled to work a continuous or split trick of seven (7) hours, and then required to remain on duty or within call for a period of five (5) hours or less in addition to the first seven (7) hours worked, in order to put in an additional hour to make up eight (8) hours' service, the employes should be compensated according to the rules of the agreement for such additional time or hours as they are held in waiting or on call in order to make up the additional hour necessary to meet the service requirements of the carrier, and the Board so rules in the application of Rule 19 to this instant case.

Insofar as the question of additional compensation is concerned, or the claim for a difference in wages between those received since July 1, 1935, and those claimed, the Board submits that in view of the long-standing differences of opinion between the parties as to the proper application of Rule 19 and previous rules to the points at issue, of the sincere efforts evidenced by both carrier and employes to adjust such differences in a manner satisfactory to both parties to the agreement, of the fact that the employes affected are paid on a monthly salary basis, and that this claim had not previously been submitted for hearing before this Division, no retroactive award will be made for additional compensation, but that the future compensation of these employes through the proper application of the rule or rules involved be determined by and made the subject of negotiations between the parties.

**FINDINGS.**—This dispute was submitted to this Division of the Adjustment Board by the Brotherhood ex parte, and both the petitioner and respondent carrier have jointly certified that hearing thereon is not desired.

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes 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 the claim is sustained so far as it affects the principle at issue, but that difference with respect to wages be not made retroactive, but referred back to the parties for negotiation as to future compensation of the employes involved.

**AWARD**

Claim sustained so far as it affects the principle at issue, but remanded back to the parties for negotiation as to the question of compensation in accordance with the last paragraph of the Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary*

Dated at Chicago, Illinois, this 3rd day of September, 1937.