

Award No. 805

Docket No. MW-766

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Spencer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DETROIT AND MACKINAC RAILWAY

STATEMENT OF CLAIM: "That all employees who were compelled by the Carrier to work less than the regular work days in the month not including Sundays and holidays be paid for all time lost since November 1, 1937."

JOINT STATEMENT OF FACTS: "On November 1, 1937 an agreement was entered into between the Detroit & Mackinac Railway and the Brotherhood of Maintenance of Way Employees, Rule No. 35 of this agreement reads as follows:

'HOURS PAID FOR. Except by mutual agreement between the representatives of Management and Employees, the regular established work period will not be reduced below eight (8) hours per day for the regular work days in the month, not including Sundays and holidays specified in Rule No. 36, to avoid making force reductions.'

Rule No. 49 of this agreement reads as follows:

'SUPERVISORY EMPLOYES. Employees whose responsibilities and or supervisory duties require service in excess of the working hours or days assigned for the general force, will be compensated on a monthly rate to cover all services rendered, except that when such employees are required to perform work which is not a part of their responsibilities or supervisory duties, on Sundays and on the following holidays; New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving, and Christmas, or in excess of the established working hours, such work will be paid for on the basis provided in these rules in addition to the monthly rate. Section Foreman required to walk or patrol track on Sunday and holidays specified above, shall be paid therefor on the basis provided in these rules, in addition to the monthly rate.'

"From the effective date of the agreement of November 1, 1937 to May 1, 1938, the Carrier worked the employees less than six days a week.

"The agreement of November 1, 1937, copies of which are in the Adjustment Board file, is by reference made a part of this statement of facts."

POSITION OF EMPLOYES: "Rule No. 35 as quoted in the Joint Statement of Facts provides that the regular established work period will not be reduced below eight (8) hours a day for the regular work days in the month not including Sundays and holidays specified in Rule No. 36 to avoid making force reductions. This rule was included in the agreement for the express purpose of providing for a full month's work for all employees retained in the service, which means every work day in the month, except the Sundays and

OPINION OF BOARD: Rule 35 of the Agreement between the parties clearly establishes an assignment of six working days a week for hourly-rated employees. The contention of the carrier that the purpose of this rule was to prohibit it from reducing the number of working hours below eight, leaving to it the privilege of designating from time to time the number of working days during each week, is without merit. If this were the only purpose of the rule it would be meaningless and superfluous, since Rule 33 definitely establishes the number of hours in each work-day.

Rule 35 is not, however, an absolute guarantee. It is limited by Rule 5 (c). This provides in part that "gangs will not be laid off short periods when proper reduction of forces can be accomplished by first laying off the junior men." This Division has held in its Award No. 372 that the substitution of a shorter work-week than that contemplated by the Agreement is a short lay-off within the meaning of the rule in question. Rule 5 (c) when read in connection with Rule 35 means that the carrier in making force reductions must do all that it can to accomplish its objective "by first laying off junior men." The evidence of record does not justify the Division in finding that the carrier exhausted its possibilities of making proper force reductions through the laying off of junior men.

In so far as the claim relates to the "supervisory employees," the Division reaffirms its interpretation and application of Rule 49 as set forth in its recent Award No. 759.

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 employees involved in this dispute are respectively carrier and employees 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 carrier in the practice complained of violated Rule 35 as to hourly-rated employees, and Rule 49 as to supervisory employees.

AWARD

The Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1939.