Award No. 914
Docket No. MW-899

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, SPRINGFIELD & ST. LOUIS RAILWAY CO.
(Elmer Nafziger, Receiver)

STATEMENT OF CLAIM: "Claim of Employes: first; that no deduction shall be made in the agreed monthly rate applicable to foremen because crews may not be working for short periods on certain dates on account of inclement weather, or not working on holidays. Second; that foremen shall be reimbursed for any deduction made in their monthly salary on account of inclement weather, or for not working on holidays, retroactive from June 1st, 1937, the effective date of the current agreement."

EMPLOYES' STATEMENT OF FACTS: "Rule 15 of Agreement between the Chicago, Springfield & St. Louis Railway and the Brotherhood of Maintenance of Way Employes, effective June 1, 1937, reads:

'Rates of pay shall be as follows:

Section Foremen	$108.00	per mo.
Extra Gang Foremen	110.00	per mo.
*Acting Section Foremen	80.00	per mo.
Bridge & Building Foremen	125.00	per mo.
Bridge & Building Carpenter	.54	per hr.
Bridge and Building Helpers	.46¾	per hr.
Section Laborers	.36	per hr.
Extra Gang Laborers	.34	per hr.
Bridge and Building Cook	57.75	per mo.
Pumper	73.00	per mo.
Crossing Watchmen	30.00	per mo.

*Rate will apply until employe has served six (6) months as Acting Foreman gaining experience as foreman.

Monthly rates for foremen are based on eight (8) hours' work daily, except Sundays.'

"Ever since the effective date of the Agreement, foremen have been docked for time, when for any reason the crew under their supervision was not worked on week days, including holidays. To illustrate, we cite the record of deductions made from one foreman during this period:

1937			Amount Deducted
June	9th	Paid for 3 hrs.—Docked 5 hrs. acct. rain)	—$2.86
June	10th	Paid for 7½ hrs.—Docked ½ hr. acct. rain)	
July	5th	Paid for 2 hrs.—Docked 6 hrs. 4th of July	— 3.12

"It has also been the practice on this road, both before and after the effective date of the current agreement, for gangs, including foreman, to tie up when weather conditions were such that men could not work to advantage. If they tied up short of their regular assignment, they were paid for actual time worked or held on duty as provided in Rule 1.

"The 'Scope Rule' provides that 'this agreement shall govern the employment and rates of pay of all employes in the Maintenance of Way Department below * * * *.' Rule 1, therefore applies to all employes covered in the 'Scope' rule except those specifically mentioned as being excepted and as foremen are not excepted, the provisions of Rule 1 apply to foremen as well as laborers or others of similar rank.

"That part of Rule 15 quoted was written into the agreement to provide a basis of payment for foremen when they worked less than eight hours on any day except Sunday. This rule provides only a rate of pay, i.e. $108.00 per month for working eight (8) hours a day each day of the month except Sundays. This rule clearly implies foreman will receive his monthly rate if he works eight (8) hours each day except Sundays.

"As previously stated, the present agreement was effective June 1, 1937, and no protest was filed by any foreman that he was improperly paid until August 3, 1938, fourteen (14) months after the agreement became effective, although foremen received no compensation for time not worked on holidays or due to inclement weather during the intervening fourteen (14) months. This would clearly indicate the rules of the agreement were being applied as intended and men were satisfied.

"The Carrier contends foremen have been paid in accordance with provisions of current working agreement and employes' complaint is in nature of a request for a new rule."

OPINION OF BOARD: The question in this case involves the right of carrier to deduct from the pay of regularly monthly rated employes (foremen) time lost on account of inclement weather or for time not worked on holidays. Petitioner relies on that portion of Rule 15 reading as follows:

> "Rates of pay shall be as follows:
>
> Section Foremen.....$108.00 per mo.
>
> * * * * * * * * * *
>
> Monthly rates for foremen are based on eight (8) hours' work daily, except Sundays."

The record shows that carrier deducts from the monthly rate of pay for foremen all time lost in excess of thirty minutes on account of inclement weather and for time not worked on holidays. The record also shows that this was the practice on this carrier when the prevailing agreement became effective June 1, 1937, and has been followed ever since the agreement became effective on this property.

Carrier contends that the footnote to Rule 15 providing that the "Monthly rates for Foremen are based on eight (8) hours' work, daily except Sundays." authorizes the practice. Carrier also relies upon Rule 1, which provides:

> "(a) Except as otherwise provided, eight (8) hours, exclusive of meal period, shall constitute a day.
>
> "(b) When less than eight (8) hours are worked for convenience of employes or when due to inclement weather interruptions to regular established work period prevent eight (8) hours' work or when assigned for service less than eight (8) hours, only actual hours worked or held on duty will be paid for."

Petitioner relies on Award 759 to sustain the claim. In that case the Board held that "In the absence of any governing provision in the schedule, the question is one of general law," and as the agreement then under consideration contained no governing provision the claim was sustained.

When Rule 1 and the footnote to Rule 15 are considered together the conclusion is inescapable that the agreement in this case contains governing provisions which removes it from the general law rule. The agreement authorizes the deductions.

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 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 carrier did not violate the wage agreement as claimed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1939.