

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TEXAS AND PACIFIC RAILWAY**

STATEMENT OF CLAIM: "Claim of E. C. Nalley, pumper, Cypress, La., that the Carrier is violating Article 9, Section 10 (c) and other rules of current agreement by assigning him to commence work at different hours on alternate days and that assignments made under the rule for commencement of work shall be uniform."

EMPLOYES' STATEMENT OF FACTS: "The starting time of the daily assignments of Pumper E. C. Nalley, Cypress, Louisiana, is as follows:

Mondays, Wednesdays & Fridays..... 11:00 A. M.
Tuesdays, Thursdays & Saturdays 5:30 A. M.
On SundaysNo assigned starting time."

POSITION OF EMPLOYES: "Article IX, Section (c) of Agreement in effect between the Texas and Pacific Railway and the Brotherhood of Maintenance of Way Employees, the rule governing starting time of employees, reads:

'Hours of Service. Overtime and Calls. Section (c). Employees' daily service will be regulated by the proper foreman or supervisor, who will designate the time and place of assembling. Proper consideration will be given to the convenience of the worker in establishing time and place. It will be the duty of the supervisory force to give all reasonable notice of any changes in time or place.'

While this rule does not specify any given starting time of the employees' daily tour of duty, we nevertheless maintain that it provides for a uniform starting time. In other words, the daily starting time fixed under that rule must be the same every day in the week.

"It is alleged by the Carrier that the assignment of E. C. Nalley is made necessary because of his being required to watch local engines tying up at Cypress on alternate days. Engine watchmen are not covered in the scope of the Maintenance of Way Agreement, and certainly pumpers who are covered by the Maintenance of Way Agreement and whose duties are covered by the rules of such agreement, should not be penalized or inconvenienced in order to take care of the work of engine watchmen, which class of employees are not covered by the Maintenance of Way Agreement.

"If, as the Carrier alleges, it was necessary to use this employe for special service on certain days, he should have been accorded extra compensation for such additional special service. The Carrier did not have the right to change the daily starting time of the employe to suit its convenience in order to avoid overtime payments.

"As stated, we maintain that the assignment of an employe's daily starting time must be uniform or the same every day in the week. If an

OPINION OF BOARD: In behalf of claimant, a pumper employed at Cypress, La., complaint is made that the carrier is violating Article 9, Section 10 (c), of the agreement between the carrier and the contracting authority of its employes, in that the starting time of claimant's daily assignments for Monday, Wednesday and Friday, is 11:00 A. M., and for Tuesday, Thursday and Saturday, it is 5:30 A. M., with no assigned starting time for Sunday. The provision upon which claimant relies, reads: "Employes' daily service will be regulated by the proper foreman or supervisor, who will designate the time and place of assembling. Proper consideration will be given to the convenience of the worker in establishing time and place. It will be the duty of the supervisory force to give all reasonable notice of any changes in time or place." The carrier contends that the above section of the agreement is not applicable to the position which claimant holds.

On the contrary, it says the position of "pumper" is governed by Article IX, Section (a-9) and Section (b), which so far as pertinent, reads: "Positions not requiring continuous manual labor, such as * * * pumpers, * * * will be paid a monthly salary to cover all service rendered. * * *. No assigned hours will be designated for employes performing intermittent service requiring them to work, wait or travel, as regulated by train service or as regulated by the character of their work. They will be paid a fixed salary for all services rendered."

Reasonably, as we think, the situation here is controlled by the provisions called to our attention by the carrier, rather than by the section of the agreement emphasized by claimant. Clearly, claimant is employed on a monthly basis, and the work he performs is intermittent, and necessarily effected by train service and the character of his duties. The understandable purport of the rule is that one employed in the circumstances of claimant's employment, may not enjoy assigned hours of service. To perform the duties of his position, claimant must work as and when his service will supplement other and objective services of the carrier. The agreement recognizes the insurmountable difficulty which would attend assignment of hours, and that uniformity of working hours in such position is not possible. Whenever other activities of the carrier are calculated to stimulate claimant into action, and make discharge of his duties important to the completion of the carrier's service to the public, then, as our study of the agreement convinces, he would be expected to respond to call. To the extent, therefore, that claimant's hours of work have been, or may be, assigned by the carrier, we are persuaded that favor rather than imposition attends the process. Let the claim be denied.

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 claimant's complaint is without merit.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1940.