

Award No. 1770
Docket No. MW-1770

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Employees' Committee:

First, that by assigning C. N. Dickerson, Crossing Watchman, Russellville, Arkansas, to six (6) hours and fifty-five (55) minutes per day, and paying him on the basis of such assignment, effective as of March 1, 1941, the Carrier violated Rules 14 and 16 of current Agreement.

Second, that C. N. Dickerson shall be restored to full time (eight hours per day) assignment, and paid the appropriate rate applicable, 36 cents per hour.

Third, that C. N. Dickerson shall be paid the difference between what he has received and that which he should have received on the basis of an 8-hour day assignment at the rate of 36 cents per hour, retroactive to March 1, 1941.

EMPLOYEES' STATEMENT OF FACTS: Prior to March 1, 1941, Crossing Watchman C. N. Dickerson was regularly assigned to eight hours per day every day in the month, for which service he received a salary of \$78.10 per month.

Effective as of March 1, 1941, the assignment of this employe was reduced to six hours and fifty-five minutes per day.

POSITION OF EMPLOYEES: Rule 14. (a) of the existing agreement between the Missouri Pacific Railroad Company and its maintenance of way employes represented by the petitioning Brotherhood, reads as follows:

"Rule 14 (a)—Except as otherwise provided in these rules, eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

The language of this rule is definite and positive. It should be subject to no misunderstanding. It makes clear provision for an eight-hour day as the minimum time to be paid for in the case of an employe who is in service for any length of time during a work day. If further clarification of this point is required, however, it is supplied by Rule 16 (a) of this same agreement, which reads as follows:

"Rule 16 (a)—Positions not requiring continuous manual labor, such as camp cooks and camp attendants, track, tunnel, bridge and highway crossing watchmen, flagmen at railway non-interlocked crossings, lampmen and pumpers, will be paid a monthly rate to cover all service rendered. For new positions this monthly rate shall be based on the hours and compensation for positions of a similar kind. If

The Employees ask that Mr. Dickerson be paid rate of 36¢ per hour. We have no wage schedule agreement with the Employees requiring payment to the crossing watchman at Russellville on the basis of 36¢ per hour. The rate established by agreement, as heretofore stated, is \$78.10 per month and this is the rate that is paid to Mr. Dickerson. The Employees are, in effect, although they do not state in their statement of claim which accompanied Secretary Johnson's letter of September 26th that Dickerson be paid eight (8) hours per day at a rate of pay established by the Fair Labor Standards Act of 1938. This Act is not a part of the agreement between the Carrier and its Employees represented by the Maintenance of Way Organization dated July 1, 1938 and we do not feel that the Board is concerned in the application of this Act under the terms of the wage schedule agreement between the Carrier and the Maintenance of Way Organization upon which this case is presented to your Honorable Board.

The Carrier feels that it has not, as asserted by the claimants, violated the terms of its agreement covering working conditions effective July 1, 1938 and that the claim of the Employees is devoid of merit and should be denied.

OPINION OF BOARD: This docket involves a consideration of rule 16 (a) of the current agreement which so far as material is as follows: "Positions not requiring continuous manual labor such as highway crossing watchmen * * * will be paid a monthly rate to cover all service rendered * * *. If assigned hours are increased or decreased the monthly rate shall be adjusted pro rata as the hours of service in the new assignment bear to the hours of service in the present assignment. The hours of employees covered by this rule shall not be reduced below eight (8) hours per day for six (6) days per week."

The facts disclose that claimant was a highway crossing watchman and assigned to work eight hours per day for seven days a week and paid a stipulated monthly wage. Commencing in March 1941 the carrier reduced the assignment to six hours and fifty-five minutes per day seven days a week, but made no reduction in the monthly wage. The claimant contends that under the expressed provisions of rule 16 (a) the carrier was obligated to work him eight hours each day during six days each week. The claimant relies upon that portion of the rule which provides: "The hours of employees covered by this rule shall not be reduced below eight (8) hours per day for six (6) days per week." The carrier contends in substance that this rule only requires that the employees be worked the equivalent of eight hours per day for six days per week or a total of forty-eight hours per week.

It is obvious that this dispute was precipitated by the enactment of the "Fair Labor Standards Act." By working these employees eight hours per day for seven days a week the agreed monthly wages would not meet the minimum requirements for the hourly wage established under the provisions of that act. Instead of increasing the monthly rate so as to meet the minimum requirements for the hourly wage the carrier reduced the number of monthly working hours to a point where the old monthly rate would meet the requirements of the hourly rate provided under the terms of the Act. We think it clear that "this Board has no concern regarding the compliance with or violation of that act." This Board's function and jurisdiction is to interpret the contract between this claimant and the carrier independent of the "Fair Labor Standards Act." Award 1228. What rights or obligations the parties to this dispute have under the terms of that Act are of no concern to this Board and this award will only attempt to construe the agreement between the parties.

The carrier relies upon Award 1228 but the rule there involved was vastly different from the rule with which we are here concerned. The only rule construed in that award was the rule which provided: "Eight (8) consecutive hours * * * shall constitute a day's work." It was held under such rule that the carrier was not obligated to work the employees eight

hours each day. But the rule with which we are here concerned says: "The hours of the employes covered by this rule will not be reduced below eight (8) hours per day for six (6) days per week." This is a specific rule to cover the type of labor being performed by claimant and a rule in addition to the general rule such as was involved in Award 1228. The language of the rule is clear. If, as contended by carrier, the rule only required that employes covered thereby be worked an equivalent of eight hours per day for six days per week it would have been a simple matter to so provide, but the rule says there will be no reduction in hours below eight hours per day for six days per week. That language is clear. The violation of the rule as asserted relates to the reduction in daily hours below eight and we are of the opinion that under the clear terms of the rule there was a violation when the carrier reduced the daily hours below eight on six of the seven days that it required claimant to work. We interpret Rule 16 (a) to mean that claimant is entitled to work eight hours each day for six days a week. If he works seven days a week, the rule does not require that he work eight hours all of the seven days. One day of the seven is not covered by the rule.

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 there was a violation of the agreement when the carrier reduced the daily hours of claimant below eight on six of the seven days that it required claimant to work. That this Board has no jurisdiction to enforce the minimum wage requirements established under the "Fair Labor Standards Act." That Act provides a method for its enforcement.

AWARD

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1942.