

Award No. 2072
Docket No. MW-2040

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood—

(1) That the Carrier violated the provision of Rule 14 of the agreement in effect by requiring J. C. Durham, J. Harbison, B. McCauley, L. M. McDaniel and I. E. Smith to remain for duty at their headquarters outside of their regularly established working hours for the period August 1 to and including September 24, 1940, with the exception of Saturdays, Sundays and holidays; and

(2) That the claimants be paid at the rate of time and one-half for each hour held on duty in excess of their regularly assigned hours until cancellation of the instructions on September 25, 1940.

EMPLOYES' STATEMENT OF FACTS: The employees named in this claim were employed in B. & B. Gang No. 7 on the Memphis Division during the period involved herein. Their regular assigned daily working hours were from 7:00 A. M. to 4:00 P. M. and they were paid on an hourly basis.

Under date of July 31, 1940, Foreman J. L. Stutts issued instructions to the men employed in B. & B. Gang No. 7 to the effect that July 31 would be the last night that they could go home or leave the town in which their outfit was stationed. Mr. Stutts further informed these men that should any of them fail to comply with his instructions they would be discharged from the service.

The employees made request on Foreman Stutts for permission to drive to their homes. Such permission was denied. Foreman Stutts insisted that the men not leave the outfit after working hours.

The instructions issued on July 31, 1940 remained in effect until they were cancelled on September 25, 1940.

POSITION OF EMPLOYES: Rule 14 (a) of the current agreement governs the hours of service and reads as follows:

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

It is the contention of the Employees that the Carrier violated the provision of the agreement in requiring B. & B. employees to remain on duty without compensating them for time so held.

When Foreman Stutts, on July 31, issued instructions for the men to remain at their outfit cars, his action constituted an obligation upon the Carrier to pay such employees for all time held outside of their regular bulletin hours.

go to own or to the show or any other amusements that they want to without my permission.'

At the time this case was presented—your letter August 23, 1940 to Division Engineer Smith, this gang housed in outfit cars was working at Earle.

The instructions, be they written or verbal, of the foremen to the members of the gang to notify the foreman when they are leaving their customary place of abode so that they could be found in event of emergencies, is not an unusual requirement of B&B Department employes working in gangs out on the line of road making outfit cars their headquarter point.

The men for whom you are filing claims performed no service, and in the absence of any rule to support such a claim as you have presented on behalf of the employes, same is respectfully declined."

The Employes have not alleged in the handling of this case with the Carrier that any specific rule of the agreement dated July 1, 1938 has been violated by the Management.

The Management contends there is no rule in the agreement dated July 1, 1938 that would support the claim presented by the employes.

POSITION OF CARRIER: That there is no dispute between the Organization and the Management involving the application of any rule of the agreement governing working conditions of employes represented by the Brotherhood of Maintenance of Way Employes.

The Organization has, however, requested that certain employes in this gang be allowed 16 hours overtime pay at the rate of time and one-half under Rule 14 of the agreement dated July 1, 1938. This rule provides that TIME WORKED following and continuous with the regular eight hour work period shall be paid for at the rate of time and one-half until relieved for rest. These employes did not work—they were released from work at completion of the work day, viz: 4:00 P. M. daily; they resumed work at 7:00 A. M. the following day. They performed no work between 4:00 P. M. and 7:00 A. M. but were released from any work—only obligation they had as an employe of the Carrier was to notify the foreman where they could be found in case an emergency arose between quitting time and starting time of the day. This rule or practice applies universally to all employes in B. & B. gangs. There is another rule of the agreement—No. 22—that provides no overtime hours will be worked without authority of a superior officer, except in case of an emergency where advance authority is not obtainable. Again this rule provides for overtime work. It is not applicable to this case as there was no overtime worked and the claimants were not instructed by any superior officer to work.

In the absence of any rule to sustain the Employes' contentions the Management feels that the Employes' claim should be denied.

OPINION OF BOARD: Some of the facts in this claim are not in dispute; while, on the other hand, there is a sharp dispute as to some of the essential facts. There is no doubt Foreman Stutts told his crew on the morning of August 1, 1940, that they could not go home after their regular working hours. The employes contend that he told them that if "any man leaves this outfit tonight, he will be discharged." On the other hand, the Carrier contends he told them not to leave unless he gave them permission.

The Board is inclined to believe that the substantial weight of the evidence is with the employes. From the record, the inference is drawn that these employes were free to go home after their regular working hours before this date. The question arises, why should the change be made? The Carrier contends it was made in order that these men could be reached in case of an emergency. If this contention be true, the men could not have been reached on Sunday, holidays, or on any date prior to August 1, 1940. The fact is undisputed that

these men could have been reached by phone at their homes in case an emergency arose. Moreover, the evidence shows that the lady who ran the boarding car gave the foreman his board, and it can be readily inferred that he was to use his power to see that all the men on the crew would board with her.

There is nothing in the rules which says men may be required to hold themselves ready for a call in emergencies. If such a requirement was intended, it would of necessity be included in the rules.

Eight hours, exclusive of meal period, constituted a day's work. [Rule 14 (a).] After that period, the men were free to go as they pleased.

In Award No. 1070, this Board said:

"No rule of the Agreement has been cited by the Carrier which imposes upon the employees involved herein the obligation, when off duty, of holding themselves available for service at all times at their place of employment. This obligation would infringe seriously upon the freedom of the employees; if such an obligation exists, without provision for additional compensation, it must be found in some express stipulation of the Agreement governing the working conditions of these employees and not simply be assumed as a general conditioning requirement of their employment contract. * * *"

See, also, Awards Nos. 491, 788, 826.

The Carrier relies upon Rule 22 which provides that no overtime will be worked without authority of a superior officer. The Board holds there is nothing in this rule which would deny these employees their claim. They were held after their regular working hours by their superior officer, Foreman Stutts.

It is true that these claimants were not to work in excess of eight hours. This Board, however, has found that the Carrier has held these claimants in readiness for work in excess of the regular eight hours. This Division has, on various occasions, and again quotes with approval the following statement from the Report of the Emergency Board created by the President of the United States on February 8, 1937:

"The penalties for violations of rules seem harsh and there may be some difficulty in seeing what claim certain individuals have to the money to be paid in a concrete case. Yet, experience has shown that if rules are to be effective there must be adequate penalties for violation."

Rule 14 has been violated, and the claim should be sustained.

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 current agreement has been violated.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of January, 1943.