

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the following employees be paid the overtime rate for one and one-half hours on August 3; one-half hour on August 6; and one hour on August 12, 1940; for time worked beyond the regular work period:

Joseph Wilson
Leopold W. Zeppetelli
Frank W. Boniecki
Frank Barbarulo

Carmen Guarneri
Charles Staroba
Homer O'Brien
Guiseppe A. Farino

EMPLOYEES' STATEMENT OF FACTS: The employees involved in this claim were employed as trackmen on the Susquehanna Division, with headquarters at Schenectady. On August 3, 1940 these employees worked on a work train and after completing their work were required to travel by track motor car from Central Station Bridge to Schenectady, a distance of approximately 25 miles. They arrived at their headquarters at 4:00 P. M. The regular assigned hours for these men were 6:00 A. M. to 2:30 P. M., with a half-hour off for lunch.

On August 6, 1940, these employees worked at Delanson installing cross-over and returned to their headquarters by track motor car, a distance of approximately 16 miles, arriving at 3:00 P. M.

On August 12, 1940, these employees worked at Delanson rebuilding switches. They returned to their headquarters at 3:30 P. M. by track motor car, a distance of approximately 16 miles.

In allowing the employees pay for this service the Carrier allowed them nine and one-half hours pay at straight time rate for August 3, eight and one-half hours pay at straight time rate for August 6, and nine hours pay at straight time rate for August 12.

An agreement is in effect between the parties bearing effective date of July 1, 1939, which, by reference, is made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The agreement in effect between the parties contains the following rule, which is cited in support of the Employees' claim:

"OVERTIME—TEMPORARY ASSIGNMENTS—CALLS

Rule 18. (a) Time worked following and continuous with the regular eight hour work period shall be paid for at the rate of time and one-half on the actual minute basis. * * *."

The Employees cannot agree with the Carrier's contention that traveling on track motor cars is considered the same as traveling on passenger trains. The track motor car on which the employees were returning to their designated assembling point was not substituted for a train; and the Carrier's instructions limit the use of such track cars to railroad business.

In the light of these facts the Employees contend that an employee assigned to such service cannot be considered as traveling under the "Travel Time" rule but is actually in service and is responsible for the company's property until he is relieved at the end of his assignment. Therefore, employees rendering service to the Carrier such as the employees were rendering in this case, cannot be considered as traveling on passenger trains free of responsibility. The Employees further contend that the time and one-half rate must be paid to such employees when held in service in excess of eight hours.

CARRIER'S STATEMENT OF FACTS: On August 3rd, 6th and 12th, 1940, the above named employees claimed overtime rate for time consumed traveling back to headquarters following completion of the work period.

POSITION OF CARRIER: The principle involved in this case is the same as that involved in Case No. 24.40 MW and ex parte submission of the Carrier on Case No. 24.40 MW is being forwarded herewith. Management submits the argument and evidence presented in Case No. 24.40 MW to sustain its position in Case No. 6.41 MW.

OPINION OF BOARD: The subject of this dispute is identical with that contained in Docket MW-2238, Award 2304, and governed thereby.

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 claimants were properly compensated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of September, 1943.