

Award No. 2306
Docket No. MW-2237

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 F. Barbarulo, C. Staroba, F. Boniecki and L. W. Zeppetelli, trackmen, be paid the difference between what they received and what they would have received had they been paid in accordance with Rule 18 (a) of Agreement for time worked in excess of the regular eight (8) hour work period on January 16, 21, 23 and 29, 1941.

EMPLOYES' STATEMENT OF FACTS: The employees named in our Statement of Claim were trackmen employed on the Susquehanna Division with headquarters at Schenectady. The employees worked as follows:

January 16, 1941, eight and one-half hours
January 21, 1941, nine hours
January 23, 1941, nine and one-half hours
January 29, 1941, nine hours

for which they were allowed time at pro rata rate for actual time on duty.

On the dates involved in this dispute the employees reported for duty at their regular starting time at the usual designated assembling point. Their regularly assigned hours of service were from 7:00 A. M. to 3:30 P. M., with a half-hour lunch period.

On January 16 the claimants were on duty until 4:00 P. M.; on January 21 they were on duty until 4:30 P. M.; on January 23 they were on duty until 5:00 P. M.; and on January 29 they were on duty until 4:30 P. M. They were allowed pay on the basis of the pro rata for time worked in excess of their regular eight-hour assignment.

On each day involved in this claim the employees were working away from their headquarters, thus necessitating the use of a company track motor car to transport these employees and their tools from their headquarters to the point where work was being performed. Likewise the employees were required to return by track motor car to their headquarters each day.

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

ing on track cars is prohibited by the instructions to any one except employes in the regular performance of their duties. Therefore, the claimants in this dispute were assigned to perform duties for the Carrier and time worked in excess of the regular eight-hour assignment should, as provided for in the agreement, be paid for at the time and one-half rate.

The Employes 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 employes 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 Employes contend that an employe 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, employes rendering service to the Carrier such as the employes were rendering in this case, cannot be considered as traveling on passenger trains free of responsibility. The Employes further contend that the time and one-half rate must be paid to such employes when held in service in excess of eight hours.

CARRIER'S STATEMENT OF FACTS: On January 16th, 21st, 23rd and 29th, 1941, the above named employes 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. 11.41 MW.

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