

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

St. Clair Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

(Joseph B. Fleming and Aaron Colnon, Trustees)

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

(a) That the Carrier violated the provision of the current agreement in failing to pay Rado Williams, crossing flagman, Blue Island, Illinois, punitive overtime for eight hours work outside of his assignment on September 10th, 1941 and in failing to pay Bennie C. Smith, crossing flagman, Blue Island, Illinois, for eight hours worked outside of his assignment on September 10th and 11th at the rate of time and one-half; and

(b) That Rado Williams and Bennie C. Smith be paid the difference between what they received and what they were entitled to receive on the above dates.

JOINT STATEMENT OF FACTS: Rado Williams was assigned to position of crossing watchman at Grove Street, Blue Island, Illinois and on September 10th, 1941 after working his regular eight hour assignment was required to work the following eight hour assignment for which he was paid on pro rata basis.

Bennie C. Smith was assigned to position of crossing watchman at Vermont Street, Blue Island, Illinois and on September 10th and 11th, 1941 after working his regular eight hour assignment was required to work the following eight hour assignment for which he was paid on pro rata basis.

POSITION OF EMPLOYES: It is the position of the Employes that the Carrier violated the provision of the agreement effective May 1, 1938, which, by reference, is made a part of this claim, Rules 24 (a) and 29 of which agreement read as follows:

"**RULE 24. OVERTIME.** (a) Except as provided in Rule 29 and as provided in Section (b) of this rule, all service continuous with the regular eight (8) hour work period, exclusive of meal period, shall be paid for at the rate of time and one-half computed on the actual minute basis. Employes required to work continuously from one regular work period into another in an emergency shall receive time and one-half rate after the expiration of the first regular work period until relieved from such emergency work, and pro-rata or straight time rate for the remainder of time worked during the regular assigned work period."

employees Exhibit "A" (Form G-86) is not complete for the reason it does not contain the instructions shown on the back of this printed form used by Section Foremen and others to report time worked by employees under their supervision. Those instructions, among other things, provide that when overtime in excess of the assigned hours is worked, a Form G-87 must be immediately filled out and mailed to the Superintendent for approval and forwarding to the timekeeping department. In this case, the Superintendent declined to approve payment of punitive rate for the additional time involved; therefore, the original Form G-86 (Employees' Exhibit "A") received by the timekeeping department was corrected to show pro rata rate instead of punitive rate and payroll was prepared on that basis and payment so allowed. Obviously, the mere reporting of overtime by a Section Foreman at punitive rate or any other specified rate cannot in all cases be accepted by the timekeeping department as a fact or authority that such basis of payment is proper under the application of agreement rules and there has never been any understanding that crossing watchmen would be paid for overtime at the time and one-half rate of pay for the reason Rules 24 and 29 clearly show that they are paid only on pro rata basis.

The instant claim is not supported by the applicable rules of the agreement with the Brotherhood of Maintenance Employees and we respectfully request that penalty overtime payment be denied by your Board.

OPINION OF BOARD: The matter here in difference is whether the assignee of a crossing watchman's position who, because of the unexplained failure of another worker, is required to work the succeeding eight hour shift after completing his eight hour assignment shall be compensated on the pro rata or punitive basis.

The cited rules read:

"RULE 24. OVERTIME. (a) Except as provided in Rule 29 and as provided in section (b) of this rule, all service continuous with the regular eight (8) hour work period, exclusive of meal period, shall be paid for at the rate of time and one-half computed on the actual minute basis. Employees required to work continuously from one regular work period into another in an emergency shall receive time and one-half rate after the expiration of the first regular work period until relieved from such emergency work, and pro-rata or straight time rate for the remainder of time worked during the regular assigned work period."

"RULE 29. WATCHMEN, ETC. 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, lamp men, pumpers, steam-shovel, pile-driver, crane and ditcher watchmen, will be paid a monthly rate to cover all services rendered. For new positions this monthly rate shall be based on the hours and compensation for positions of a similar kind. 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) per day for six days per week."

The position of the employees is stated as follows:

"It is the Employees' contention that a crossing flagman who is regularly assigned to eight hours a day, six days a week, has fully complied with the provision of Rule 29, and if required by the management to perform service on any other assignment that the provision of Rule 24 should apply, granting the employe time and one-half rate for all service rendered outside of his regular assignment on the position to which he is not regularly assigned."

The carrier contends that the words "Except as provided in Rule 29" exclude this class of employes from the benefits of Rule 24, and cites Award 1398 in support of its position. The Carrier states that during over twenty years operation under the cited rules it has never been the practice to pay punitive rates to watchmen.

A literal reading of the working agreement fails to reveal clear support for either the position of the employes or of the carrier. The provisions on the subject of overtime for the classes of employes described in Rule 29 are, to say the least exceedingly obscure. This obscurity has not been removed by the course of decision of controlling tribunals. See Award 1398, United States Labor Board Decisions 548 and 808. The practical result of the interpretation advocated by the employes would be to create a disparity between the treatment accorded watchmen assigned to crossings where a single shift is used and those assigned to crossings where continuous protection is afforded the public. The practice of long standing has been to accord like treatment to all such watchmen.

The carrier represents that it has not been the practice to pay punitive rates to watchmen during over twenty years while the cited rules have been in operation. This representation is not questioned by the employes. They say erroneous practice is without significance.

That practice, even long continued, will not justify a tribunal in adopting an interpretation of a contract at war with the plain meaning of its terms, is a principle we do not question. However, when the words of the contract are obscure, and do not clearly reveal the intention of the parties, that is to say where ambiguity must be dealt with, the universal principle to which we have adverted is without force. In case of ambiguity, the practical interpretation adopted by the parties may safely be relied upon as evidencing the intention manifested by their confusing verbage. In this instance the practice is of long standing, and we place our reliance upon it in denying the claim for punitive rates. Such an interpretation is not only in harmony with the intention both parties have read from the contract during twenty years, but also with the result of Award 1398 supra.

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 the carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of February, 1944.