

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:

(a) That the Carrier violated the seniority provisions of the agreement in assigning junior employees to work from 6:00 P. M., October 18, to 2:30 A. M., October 19, 1941, while B. & B. Carpenters, R. B. Huffines and T. H. Donaldson, White River Division, were available to perform the work; and

(b) That R. B. Huffines and T. H. Donaldson be paid at the overtime rate from 6:00 P. M., October 18, to 2:30 A. M., October 19, 1941.

EMPLOYEES' STATEMENT OF FACTS: On October 18, 1941 the B. & B. gang in which B. & B. mechanics R. B. Huffines and T. H. Donaldson were working was engaged in cribbing up track at Herron, White River Division. When the gang was released at 6:00 P. M., it was decided to assign two mechanics to watch the cribbing and protect the track. The two mechanics so assigned worked from 6:00 P. M., October 18th until 2:30 A. M., October 19th, 8 hours and 30 minutes overtime. Instead of assigning R. B. Huffines and T. H. Donaldson, senior B. & B. mechanics, to this overtime work, the Carrier assigned two junior mechanics working in the same gang, O. G. Grisham and P. E. Baker.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: As stated in Employees' Statement of Facts, on October 18, 1941 a condition arose in connection with the services of the B. & B. gang in which R. B. Huffines and T. H. Donaldson were employed that would afford two members of that gang an opportunity to work some overtime and earn some additional money.

Every man employed whether it be on a railroad or anywhere else is seeking to improve his economic status, to gain advancements, and to work in his own rank whenever an opportunity affords, in order to make his earnings as large as possible. To assure employees in the Maintenance of Way Department of that opportunity rules have been negotiated and written into agreement between the Carrier and the Brotherhood which provide that the senior employe shall be given preferred consideration in acquiring advancement, opportunity for service, etc.

We quote Schedule Rules 1, 1 (c), and 2:

"RULE 1. Seniority begins at the time the employe's pay starts on the position to which assigned following bulletining of the vacancy as provided in Rule 11, except:

tenance of Way Department. There is no rule, either in the working agreement or by practice, that sets up a condition of employment whereby senior employees are, particularly in emergencies, called in preference to junior employees for overtime work. The seniority rules relate and apply to the recognition of senior employees in filling new positions or vacancies. Nothing in the rule whatsoever that says that senior men must be given preference over junior men to overtime work. The only rule in the working agreement relating to overtime is in the Hours of Service, Overtime and Call Rule—No. 14—and that rule provides for the method of payment when overtime is worked. There is no allegation in this case involving this rule as the men that worked the overtime were compensated for the services performed in conformity with the rule.

The Management feels that there is no basis whatsoever under the rules of the working agreement that would sustain the Complainants contentions in this case and that they should accordingly be denied by your Honorable Board.

OPINION OF BOARD: On October 18, 1941, the B. & B. gang was engaged in cribbing up track at Herron, White River Division. When the gang was released at 6:00 P. M., it was decided to assign two mechanics to watch the cribbing and protect the track. O. G. Grisham and P. E. Baker were assigned, and they worked from 6:00 P. M., October 18, until 2:30 A. M., October 19, eight hours and thirty minutes overtime. R. B. Huffines and T. H. Donaldson, senior B. & B. mechanics contend that they were entitled to this assignment.

Petitioners rely upon Rules 1, 1 (c), and 2. It is the Carrier's contention that these seniority rules do not apply to overtime work, as shown in this record.

We are of the opinion that the seniority rules apply to overtime work. The rules do not spell out any exception in reference to overtime work. By analogy, this view is supported by Awards Nos. 2341, 2426, and 2490.

It follows that 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 Carrier violated the Agreement as contended by the Petitioners.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.