

Award No. 2973

Docket No. MW-2994

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

(James M. Douglas, 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 that C. E. Russell, Section Laborer, Piedmont, Missouri, shall be paid the difference between what he received at pro rata and that which he should have received at time and one-half for services rendered during overtime hours at Whitehouse, Missouri, from May 22nd to June 5, 1943, inclusive.

EMPLOYEES' STATEMENT OF FACTS: C. E. Russell was regularly assigned as section laborer at Piedmont, Missouri, working regularly assigned daytime hours. On May 22, 1943, Russell and one or two other section laborers employed on the Piedmont section were instructed by the Roadmaster to go to Whitehouse, Missouri, some distance away from Piedmont to work nights in connection with an emergency occasioned by high water. In compliance with those instructions, C. E. Russell worked at Whitehouse from 7:00 P. M. until 8:00 A. M. on the several days during the period from May 22 to June 5, 1943, inclusive.

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

POSITION OF EMPLOYEES: Rules 14 (f-1) and 18 of Agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employees read:

"Rule 14 (f-1) Except as provided in Rule 16 and as otherwise provided in these rules, time worked following and continuous with the regular eight (8) hour work period shall be paid for at the rate of time and one-half until relieved for rest.

Rule 18. Regular assignments will have a fixed starting time and regular starting time will not be changed without at least thirty-six (36) hours' notice to the employees affected, except as otherwise agreed between the employees and local supervisory officers based on actual service requirements."

As will be observed, Rule 18 provides that regular assignments will have a fixed starting time and that such regular starting time will not be changed without at least 36 hours' notice except as otherwise agreed between employees and local supervisory officers based on actual service requirements. Rule 14 (f-1) provides that except as provided in Rule 16 and as otherwise provided in the rules, time worked following the regular eight (8) hour work period which, of course, means the regular eight (8) hour assignment, shall be paid for at the rate of time and one-half. Regarding the term in Rule 14 (f-1) "and as otherwise provided in these rules", there is no proviso in any other rule that precludes a section laborer from payment at time and one-half rate for service during overtime hours.

The case being practically identical, the Management feels that Award 2172 should govern and claim be properly denied.

OPINION OF BOARD: The facts are not in dispute. Carrier's track in the vicinity of White House, Missouri runs at the base of a high bluff along the Mississippi River. In May 1943 the river was out of its banks and affected operations. Slips and slides necessitated patrolling the track at night. Russell, regularly assigned as a section laborer on the Piedmont Section some 100 miles south of White House, with hours 7:30 a. m. to 4:30 p. m., was assigned with others to this duty. He worked there from May 23 to June 5, with hours 7:00 p. m. to 7:00 a. m. During this period he was paid the pro rata rate for eight hours and the overtime rate thereafter. At the conclusion of this work he was returned to his regular assignment on the Piedmont section.

Organization's position is that Russell is entitled to the overtime rate for all the hours he worked at White House as they were outside the usual hours of his regular assignment on the Piedmont section.

Carrier contends that Russell's assignment to patrol duty at White House was a regular assignment for the period of the high water and by observing the requirement of proper notice it was authorized to change Russell from one regular assignment to another with different hours without becoming liable for the overtime rate.

However, it appears to us that Russell's new assignment was for emergency service brought about by flood conditions. Such being the case, Rule 25 relating to emergency service would apply. It requires "all hours worked will be paid for in accordance with practice at home station". The following pertinent sections of Rule 14 govern "practice at home station."

"(h) Employees will not be required to suspend work during any regular assigned work day period for the purpose of absorbing overtime."

"(i) Where special work is done outside of regular work period and extra compensation agreed upon, overtime will not apply."

"(j) Except as provided in Rule 15, employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less. If held on duty in excess of two (2) hours, time and one-half time will be allowed on the minute basis."

The above sections of Rule 14 provide for the overtime rate for time worked outside the hours of the regular work period when the compensation for such work has not been agreed upon under Section (i). It is our conclusion they govern this case. Accordingly the claim must be sustained. See Award 2775.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1945.