

Award No. 2975

Docket No. MW-2999

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(James M. Douglas, Referee)

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that crossing watchmen in the St. Louis Terminal, who were laid off and lost time during a period of high water, shall be paid for time lost on the basis of 8 hours per day for each day lost as follows:

C. L. Johnson	May 6 and 8, 1944
Angelrodt Street Crossing	
Edward Hackstetter	May 4 to 8, 1944
Ferry Street Crossing	inclusive
Frank J. Bock	April 30 to May 8, 1944,
Ferry Street Crossing	inclusive
Henry Kuehans	May 8, 1944
Angelica Street Crossing	
Walter T. Kazban	May 6 and 8, 1944

JOINT STATEMENT OF FACTS: On April 28, 1944, the crossing watchmen affected employed in the St. Louis Terminal were advised that because of high water the service on all the crossings, except on the Branch Street crossing, would be discontinued pending further notice, and that the crossing watchmen could exercise their own option of either taking their vacations or lay-off losing time.

Those of the crossing watchmen who had not already had their vacations, took vacations beginning April 29, 1944. When they returned from their vacations and reported for service they were advised that traffic on the crossings had not yet been restored, and that their services would not be required. Hence, they lost time as indicated in the Statement of Claim.

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

POSITION OF EMPLOYES: Rule 39(a) of Agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employees reads:

"Positions not requiring continuous work, such as track, bridge, and highway crossing watchmen, signalmen at non-interlocked crossings, draw bridge tenders, lampmen and pumpers, will be paid a monthly rate covering all services rendered. This monthly rate shall be based on the present hours and compensation. If present 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, except that hours above ten (10) either in the new or present assignment shall be counted as one and one-half in making adjustments. In no such case

This rule not to apply to laborers in seasonal extra gangs covered by Rule 4 (e), or to other employees who have been out of service twelve (12) months or over."

The foregoing rules make clear the intention of the parties to discontinue positions and to reduce force when the services of employees thereon cannot be utilized constructively. The Management is responsible for determination of the circumstances when positions are to be put on and when positions are to be discontinued. So long as this function of Management is exercised in good faith and without contravention of a specific provision of agreement, there are no grounds for a determination that employees are entitled to pay for positions which have been discontinued.

The cause for discontinuance of positions in this case was high water preventing use of the railroad-highway crossings. There was no choice but to discontinue the positions. The employees were duly notified and they were accorded the privilege of reducing their inconvenience and loss of earning power by taking their vacations with pay at that time. There is no showing that the act of discontinuing the positions in question was in contravention of any specific term of the agreement.

Rule 39 was not violated. That rule fixes the rate of pay according to the assignment of duty-hours, and it specified the MINIMUM basis for the rate as eight hours for six days per week. However, it does not require that employees be compensated when their "assignments" are discontinued and it does not prohibit discontinuance of "assignments". In fixing the basis for the rate it contemplates that the rate of pay exists concurrently with the existence of the assignment and that the rate of pay ceases when the assignment is discontinued. No other sound conclusion can be drawn from it.

It is the position of the Management that it acted properly and within its rights under the terms of agreement in discontinuing assignments of the claimant employees and that the payments claimed are not supported by agreement rules.

OPINION OF BOARD: Because of high water operation between St. Louis and North St. Louis was temporarily discontinued. Claimants, Crossing Watchmen, were laid off from April 29 until May 9, 1944. Some of the claimants elected to take their vacations on notice from Carrier they could do so or otherwise they would lose time. Claimants are paid a monthly rate.

The question for decision is whether Carrier is authorized to deduct from claimants' monthly rate for the time they were off due to the interruption caused by the flood.

Carrier relies on Rule 38(b):

"When less than eight (8) hours are worked for convenience of employees, or when regularly assigned for service of less than eight (8) hours on Sundays and Holidays, or when, due to inclement weather, interruptions occur to regular established work period preventing eight (8) hours of work, only actual hours worked or held on duty will be paid for, except as provided for in Rule 51."

Rule 51 referred to is:

"When hourly rated employees are required to report at usual starting time and place for the day's work, and conditions prevent work being performed, they will be allowed a minimum of three (3) hours at pro rata rate. If held on duty over three (3) hours, actual time so held will be paid for. This will not apply to employees notified in advance of usual starting time."

In connection with these rules we must also consider Rule 37:

"Eight (8) hours, exclusive of meal period, shall constitute a day except as otherwise provided in these rules."

It will be noticed that Rules 38(b) and 51 refer particularly to hourly rates and hourly rated employees.

A different rule established the basic day for non-continuous work and expressly includes crossing watchmen.

Rule 39 (a):

"Positions not requiring continuous work, such as track, bridge, and highway crossing watchmen, signalmen at non-interlocked crossings, draw bridge tenders, lampmen and pumpers, will be paid a monthly rate covering all services rendered. This monthly rate shall be based on the present hours and compensation. If present 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 except that hours above ten (10) either in the new or present assignment shall be counted as one and one-half in making adjustments. In no such case shall such monthly rates be based at less than eight (8) hours per day for six (6) days per week. The wages for new positions will be in conformity with the wages for positions of similar kind."

Rule 39(a) makes no exception because of interruptions due to inclement weather nor specifically authorizes any deductions therefor. It provides for a monthly rate based "on the present hours" covering all services rendered. The basic day for those employees covered in Rule 39 may have exceeded the eight-hour basic day established by Rule 37 for other employees. It thus appears that Rule 39 covers a different subject than 38(b) and the two rules are not to be read together. Therefore the provision of Rule 38(b) about interrupted service due to inclement weather does not apply to the employees covered by Rule 39. Accordingly Carrier is obligated to pay the monthly rate without deduction regardless of such interruption, having made no exception to cover it. A monthly rate ordinarily indicates a hiring for the month. See Awards 320, 759, 827, 1010 and 1228.

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.