

**Award No. 3039**

**Docket No. MW-3084**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Curtis G. Shake, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**BOSTON AND MAINE RAILROAD**

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

(a) That the Carrier violated Agreement in effect by requiring Steel Crew Foreman E. DeBlois and members of his crew to work from 1:00 P.M. until 11:00 P.M. with one-half hour off for lunch and requiring these employees to lay off during their regular work period from 7:30 A.M. to 12:30 P.M. on each of the days, July 9th, 10th, 12th and 13th, 1943.

(b) That on days in question each member of aforementioned steel crew shall be paid on the following basis: From 7:30 A.M. to 4:00 P.M., ½ hour off for lunch, 8 hours at pro rata rate; from 4:00 P.M. to 11:00 P.M., ½ hour off for lunch, 6½ hours at pro rata rate. In that each of these men have been paid for eight (8) hours at pro rata rate and 1½ hours at time and one-half rate on each of the days in question, each of them is entitled to additional payment for five (5) hours at time and one-half rate on each of the days involved.

**JOINT STATEMENT OF FACTS:** The regularly assigned hours of employees in Foreman E. DeBlois' steel crew were from 7:30 A.M. to 4:00 P.M. with one-half hour off for lunch. Under date of July 7, 1943, Supervisor B&B issued the following instructions to Foreman E. DeBlois:

"Boston, July 7, 1943

Mr. E. DeBlois:

Effective Friday, July 9th, working hours for your crew will be as follows:

1:00 P.M. to 11:00 P.M. (½ meal period).

These hours are in effect until repairs are completed at Coal Handling Facilities, New Engine Terminal.

(Signed) F. R. SPOFFORD  
Supervisor B&B

JJM/D  
CC—Mr. A. J. Cunningham"

In compliance with that instruction, Foreman E. DeBlois and members of his crew did not work from 7:30 A.M. to 11:00 P.M., but worked from 1:00 P.M. until 11:00 P.M. with one-half hour off for lunch on each of the following dates: July 9, 10, 12 and 13, 1943. They were paid at

It should be noticed in the agreed facts that more than 36 hours' notice of the change of starting time was given to the crew.

The work to be done was on a coal trestle which could not be handled during the regular morning hours because of the density of traffic at that time but could be handled beginning at 1:00 P.M. and working through to 11:00 P.M. Therefore, it was decided to change the starting time of this shift in direct accord with the second paragraph of Rule 35 quoted above. Obviously this paragraph was put in in contemplation of just such operations when the work could not be done during the regular hours fixed for the general force, and it is certainly a fair inference that under the second paragraph of Rule 35 a change of the starting time of a shift is permissible for proper operation.

The Committee, however, quote Rule 41 and state that in effect the men were laid off for the period from 8:00 A.M. to 1:00 P.M. and that they were laid off for the purpose of absorbing overtime. The very use of words in Rule 41 disproves the contention of the Committee; the men were not laid off nor were they absorbing overtime. The phrase "absorbing overtime" implies that overtime has already been performed, and paid for, and that in order to make up for this the Railroad will lay men off for a day or more, as may be necessary.

If the Board should accept the interpretation placed on the rules by the Committee, the Board would in effect be writing new rules into the Agreement which it is admitted is beyond the jurisdiction and authority of the Board.

**OPINION OF BOARD:** Prior to July 7, 1943, the Claimants, consisting of a Steel Crew Foreman and the members of his gang, were regularly assigned 7:30 A.M. to 4:00 P.M., with 30 minutes for lunch. On the above date the Carrier issued instructions that beginning July 9, the working hours of the Claimants would be 1:00 P.M. to 11:00 P.M., with one-half hour for a meal period. Claimants worked pursuant to the above instructions to and including July 12, for which they assert that they are entitled to five hours for four days at time and one-half instead of straight time rate.

Disposition of the claim turns upon the proper interpretation and application of the following language found in Rule 35:

"\* \* \* employees working single shifts regularly assigned exclusively to day service will start work between 6:00 A.M. and 8:00 A.M. \* \* \*

"For operations necessitating work period varying from that fixed for the general force, the hours of work will be assigned in accordance with the requirements."

Considering the above provisions together, we think they mean that the employees referred to in the first quotation shall start work between 6:00 A.M. and 8:00 A.M., unless the requirements of the work necessitate a departure therefrom. Whether any such necessity exists must, in the first instance, be determined by the Carrier; but this right must be reasonably and not arbitrarily exercised, and must be subject to review by this Board. See Award No. 3012.

The joint statement of facts discloses that the Claimant's regular hours were changed by written notice which recited that the 1:00 P.M. to 11:00 P.M. hours would remain "in effect until repairs are completed at Coal Handling Facilities, New Engine Terminal." The Carrier further states that "the work to be done was on a coal trestle which could not be handled during the regular morning hours because of the density of traffic." We think this showing was sufficient, prima facie, to justify the Carrier's conduct and to ease upon the Petitioner the burden of rebutting the showing that the change of starting time was not reasonably necessary. That burden the Petitioner has failed to discharge. On the contrary, it relies upon

Rule 41: "Employees will not be laid off for the purpose of absorbing overtime", which has no application to this controversy.

**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 parties waived oral hearing thereon;

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 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 20th day of December, 1945.