

Award No. 3055

Docket No. MW-3146

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that section laborers Max Rubick and M. Anthos shall be paid the difference between what they received at pro rata rate and that which they should have received at time and one-half rate for services rendered during overtime hours from February 1 to 20, 1943, inclusive.

EMPLOYES' STATEMENT OF FACTS: Section laborers Max Rubick and M. Anthos, Sayre, Pa., were regularly assigned to daytime service from 8:00 AM to 4:30 PM with thirty minutes off for lunch. Effective February 1, 1943 they were instructed to work nights, continuing working nights until February 20, 1943.

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

POSITION OF EMPLOYES: Rules 4-d-1, 4-f, 4-h-1, and 4-h-2 of Agreement between the Carrier and the Brotherhood of Maintenance of Way Employees effective February 15, 1938 read:

"Rule 4-d-1. Time worked or held on duty following and continuous with the regular eight-hour work period shall be paid for at the rate of time and one-half time computed on the actual minute basis, except as otherwise provided in these rules."

"Rule 4-f. Except as otherwise provided in these rules, employees notified or called to perform work not continuous with the regular work period, will be allowed minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis, except that employees who have completed their work period, and have been released from duty, required to return for further service within thirty (30) minutes after being released, will be paid as if on continuous duty."

"Rule 4-h-1. Starting time of the work periods for regular assigned service will be designated by the supervisory officer and will not be changed without first giving the employees affected twenty (20) hours' notice."

"Rule 4-h-2. Employees working single shifts, regularly assigned exclusively to day service, will start the work period between 6:00 A.M. and 8:00 A.M., based either on Standard Time or Daylight Saving Time."

While this and the other claim on which ex parte submission is being made today, are the only claims which have progressed to your Board, it is true that the method of filling such positions and the practice of working some employees, ordinarily working during the day, at night, all at pro rata time for eight hours and time and one-half after eight hours, has been in effect for all time in the past and at the present time, under the agreement which was in effect at the time of this occurrence and under the agreement dated April 15, 1944, wherein the rules with respect to starting time, etc., are the same as in the old agreement.

We beg to submit that there has been no violation of the agreement in this case, and these men were properly paid, and in substantiation of our position, I call attention to the rulings of your Board numbered 2172, 2714 and 2826.

We, therefore, ask that our position be sustained and claim denied.

OPINION OF BOARD: Claimants were section laborers regularly assigned to single shift day service, working from 7:00 A.M. to 4:00 P.M. In February, 1943, it became necessary to maintain fires at some of the Carrier's water stations to prevent freezing. Claimants were assigned to attend such fires between 9:00 P.M. and 5:00 A.M. It is the contention of Claimants that they are entitled to pay at the time and one-half rate for the days worked outside their regularly assigned positions. The applicable rules of the current Agreement are:

"Rule 4-h-1. Starting time of the work periods for regular assigned service will be designated by the supervisory officer and will not be changed without first giving the employees affected twenty (20) hours' notice."

"Rule 4-h-2. Employees working single shifts, regularly assigned exclusively to day service, will start the work period between 6:00 A.M. and 8:00 A.M., based either on Standard Time or Daylight Saving Time."

It is the contention of Claimants that the starting time of their regular single day shift assignment could be changed to any time between 6:00 A.M. and 8:00 A.M. after 20 hours' notice without a rule violation but that any work performed outside of the shift thus established are overtime hours for which the overtime rate applies.

It is evident that the work performed in maintaining fires was of such a nature that it did not constitute a position and consequently the employees designated to perform it were not "assigned" to new positions in the usual sense of the word. They were performing work outside of their regularly assigned hours.

We think the decision is controlled by Awards 2973 and 2775, both being cases where the facts are very similar to the facts in the confronting case and arising under agreements having similar applicable rules. Awards 2826, 2714 and 2172, cited by the Carrier, appear to have been decided under agreements having applicable rules that are not contained in the Agreement between the parties in the present case. Consequently, on the basis of Awards 2973 and 2775, an affirmative award is required.

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 20th day of December, 1945.