

Award No. 3056

Docket No. MW-3147

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 Ameboli Devoli and Nick Venturino, section laborers, Geneva, 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 the overtime hours from 9:00 p.m. to 5:00 a.m., per day from August 28th to October 3rd, 1941, inclusive.

EMPLOYEES' STATEMENT OF FACTS: Section laborers Ameboli Devoli and Nick Venturino, Geneva, N. Y., were regularly assigned to daytime service. Effective August 28, 1941 they were instructed to work nights from 9:00 PM to 5:00 AM in connection with track patrol, continuing working nights until October 3, 1941.

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 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 employes, 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 August, 1941, it became necessary to patrol a portion of the main track to prevent outside tampering therewith. Claimants were assigned to such track patrol work between 9:00 P.M. and 5:00 A.M. on the days specified in the claim. 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 facts in the present case are similar with those in Award No. 3055, adopted herewith. The parties are the same and the applicable rules are identical. Consequently, that Award controls the result here. 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 Employee involved in this dispute are respectively carrier and employee 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 Contract.

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.