

Award Number 3110

Docket Number MW-3135

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mr. Harold Clark, Assistant Track Foreman, Section K-3, Champlain Division, shall under the application of the Rule 17 (d), be paid the difference between what he did receive at straight time rate and that which he should have received at time and one-half rate for work performed on various Sundays and holidays subsequent to June 11, 1944.

EMPLOYES' STATEMENT OF FACTS: Subsequent to June 11, 1944 Harold Clark, Assistant Track Foreman, Section K-3, Fort Ticonderoga, New York, Champlain Division, has been required to patrol track between Whitehall and Port Henry every other Sunday and holiday. For that service on Sundays and holidays Harold Clark has been paid on the basis of straight time for the first eight hours of service.

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

POSITION OF EMPLOYES: As stated in Employees' Statement of Facts, Harold Clark is regularly assigned as Assistant Track Foreman on Section K-3, Fort Ticonderoga, New York, working in that assignment six days per week or every week day, except such weeks as in which holidays occur. On every other Sunday and holiday he is called upon or required to patrol track between Whitehall and Port Henry, a distance of approximately 39 miles. Schedule Rule 17(d) governing payment for Sunday and holiday work reads:

"Rule 17 (d). Except as otherwise provided in this Agreement, work performed on Sundays and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation, shall be considered a holiday), shall be paid at the rate of time and one-half, except employees necessary to the continuous operation of the Railroad and who are regularly assigned to work on Sundays and holidays, or employees who work in the place of those so assigned, will be compensated on a straight time basis."

As will be observed, Rule 17(d) provides that except as otherwise provided in this Agreement, work performed on Sundays and the named legal holidays shall be paid for at the rate of time and one-half. There is no provision in the Agreement which excludes an Assistant Track Foreman who

Year's day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation, shall be considered a holiday), shall be paid at the rate of time and one-half, except employees necessary to the continuous operation of the Railroad and who are regularly assigned to work on Sundays and holidays, or employees who work in the place of those so assigned, will be compensated on a straight time basis."

For a number of years the patrolling of track in the territory covered by Assistant Foreman Clark on Sundays and holidays has been regularly assigned and was part of the regular assignment of Clark during the period of this claim. It has always been the practice for two men to cover the patrol, working alternate Sundays. Assistant Foreman Clark was therefore an employee "necessary to the continuous operation of the railroad," "regularly assigned to work Sundays and holidays" and was properly compensated on straight time basis for the Sunday and holiday assignment.

It is the position of the Carrier that claim is not supported by Rules of Agreement and Carrier respectfully requests claim be denied.

OPINION OF BOARD: Under the facts of record in this case the claimant was not an employee regularly assigned to work seven days per week nor one working in place of an employee so assigned. His claim for pay for work performed on Sundays and holidays subsequent to June 11, 1944 at rate of time and one-half therefore should be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereof, 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 claimant should be paid at the rate of time and one-half as stated in the Opinion of Board.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 31st day of January, 1946.