

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

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 Frank Pagano, trackman, Ballston, Spa., who was called for service at 10:45 P. M. September 18, 1944, shall, under the application of Schedule Rule 19, be paid for a call, two hours at time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: At about 10:45 P. M. September 18, 1944 Trackman Frank Pagano, Ballston Spa., was notified or called to report for work. Mr. Pagano reported at his headquarters, the tool house, at approximately 11:20 P. M., when he discovered that the gang to which he was assigned was not there. He then secured a lantern and proceeded to "J S" Tower which is located about one-half mile from the tool house to ascertain where the section gang was. After remaining there for some time and being unable to locate the section gang, he returned to his home.

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 19 of Agreement in effect between The Delaware and Hudson Railroad Corporation and the Brotherhood of Maintenance of Way Employees reads:

"Rule 19. Employees notified or called to perform work not continuous with the regular work period and reporting within a reasonable time, will be allowed a 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.

When regular employees are called under this rule and work through to their regular assigned starting time and from then on to the completion of their regular assigned eight (8) hours, it is understood that they will be paid under the Call Rule from the time called up to the start of the regular assigned four hours at time and one-half time, and for the regular assigned hours of that day at the pro rata rate."

As will be observed, Rule 19 provides that employees notified or called to perform work not continuous with the regular work period and reporting within a reasonable time will be allowed a minimum of three hours for two

His home was only 5 minutes' walk from the tool house and he had not yet reported 35 minutes after being called. Claim for a minimum call is not supported by Rule 19 and Carrier respectfully requests claim be denied.

OPINION OF BOARD: Claimant, a trackman, was called to report for work at 10:45 P. M. on account of a train wreck. He reported at the tool house, the point designated for reporting, at 11:20 P. M. and discovered that the Gang had left. He claims he should be paid for a call.

The applicable rule is:

"Employees notified or called to perform work not continuous with the regular work period and reporting within a reasonable time, will be allowed a minimum of three (3) hours for two (2) hours' work or less, * * *." Rule 19, current Agreement.

The controlling facts are not in dispute. Claimant was called at 10:45 P. M. His home was five minutes walk from the tool house. He arrived at the tool house at 11:20 P. M., thirty-five minutes after he was called. He knew that the call was the result of a train wreck which was tying up traffic. The determining question is whether he reported within a reasonable time.

A reasonable time, as the term is used in the rule before us, means the time that an ordinary individual would require in reporting for duty under similar circumstances. It seems to us that the Claimant, even though he may have been in bed when called, failed to report within a reasonable time under the circumstances here shown. Claimant knew that a wreck had occurred and that the opening of the line to traffic was highly essential. With this information, he employed thirty minutes in preparing to leave his home. We think an ordinary person having information as to the nature of the emergency and a realization of the importance of the work to be done, would, under the circumstances here shown, have reported in a shorter period of time than that taken by the Claimant. The record before us does not warrant a sustaining award.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of March, 1946.