

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) That by paying employes notified or called for service not continuous with the regular work period from the time such employes report at their designated tool houses, outfit cars, camps, or shops instead of from the time called, the Carrier violates the provision of Schedule Rule 19;

(2) That all employes of the Maintenance of Way Department who have been called to perform work subsequent to August 25, 1944, and who have been allowed pay from the time that they actually reported at their headquarters, be allowed a wage adjustment to cover the difference in pay between what they did receive and what they would have received had they been allowed pay from the time they were notified or called to report for work.

EMPLOYEES' STATEMENT OF FACTS: Since on or about August 25, 1944 employes who have been notified or called under the application of Schedule Rule 19 have been paid from the time they actually reported at tool houses, outfit cars, camps or shops, or other designated places instead of, as Rule 19 provide, being paid from the time called.

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

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

"Rule 19. Employes 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 employes 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 employes 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

POSITION OF CARRIER: It is the position of the Carrier that when an employee is called under Rule 19, pay starts when he begins work in accordance with Rule 15 (f). Such an application of the rules would be the only fair application. Under an application requested by the employees, an employee who happened to be called first would be under pay first and in many instances he would probably not report for work until sometime after an employee who was called later. In such a case the man who was called first would be under pay before a man who actually reported for work and was already working prior to the time the first man reported for work. Such an application of the rules in question is unreasonable, contrary to long existing practice and cannot be supported.

In handling this case on the property, the Employees' contention was " * * * they will be paid under the call rule from the time called up to the start of the regular assigned tour hours * * *." While it is the position of the Carrier that pay for all calls under Rule 19 starts when employees begin work, it is desired to call attention to the fact that the second paragraph of Rule 19 only covers pay for those instances where regular employees are called and work through to their regular assigned starting time and could have no bearing on pay for calls as covered by the first paragraph of Rule 19.

It is the position of the Carrier that when employees are called under Rule 19, their pay starts when they begin work, in accordance with Rule 15 (f) and the interpretation requested by the employees should be denied.

OPINION OF BOARD: The employees here contend that they are entitled to pay from the time called to perform work and not from the time they report and that the Carrier violates Rule 19 in not so paying them.

Under the caption "beginning and ending of day," Rule 15 (f) provides:

"Except as otherwise provided, employees' time will start and end at designated tool houses, outfit cars, camps or shops."

The caption is not controlling over the language of the rule. So far as important here, the rule provides that generally an employee's time starts when he reports for work.

Rule 19 applies to calls. The first paragraph provides that when a man is called and reports within a reasonable time he shall be allowed time based upon a fixed minimum number of hours. It provides an exception that where an employee has completed his work period and been released from duty and is required to return for further service within thirty minutes after being released, he will be paid as if on continuous duty. This provision negatives any intention that he is to be paid from time of call.

The second paragraph provides that when called under the rule and when the employee so called "works 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 tour hours at time and one-half time, and for the regular assigned hours of that day at the pro rata rate." It is quite apparent that the only time the employee is to be paid from time called is when his service under the call runs up to the time of his regular assigned hours of service, and then works in addition his assigned hours. The provision is so limited and by so limiting the provision any intent to pay in all instances from time called is negated.

The employees contend that the rule was so applied from July 1, 1939 to August 25, 1944. To sustain the contention they submit a letter from the Carrier's Roadmaster to all foremen. This letter does not prove a practice or an agreed upon interpretation. It recites that it had recently been discovered that foremen had "in some instances" been reporting men on duty at the time they were called instead of at the time they reported. It ordered

the foremen to make correct reports as to when the men were "on duty." This falls far short of establishing a practice or an agreed to interpretation. It negatives any such a contention.

As we understand the claim it is not based upon work conditions falling within the exception contained in the second paragraph of Rule 19 when properly construed. Hence the claim must be denied.

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 is not shown to have violated Rule 19 and accordingly the wage adjustments claimed must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1946.