

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO AND NORTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Nick Covic, B&B employe, Black Hills Division, who, on January 4th and 5th, 1946, rendered service as follows: from 7:30 A. M., January 4th until 4:30 P. M., worked his regular assignment with one hour off for lunch; from 4:30 P. M. until 10:00 P. M., January 4th traveled by train from Chadron to Long Pine; from 10:00 P. M., January 4th until 5:30 A. M., January 5th, worked at Long Pine loading machinery; and from 5:30 A. M. until 7:30 A. M., January 5th, waited at Long Pine for train, shall, under the application of Schedule Rules 26 and 43-(a), be paid for that service as follows:

From 7:30 A. M. until 10:00 P. M., January 4th, 13 hours and 30 minutes at pro rata rate; from 10:00 P. M., January 4th until 12:30 A. M., January 5th, 2 hours and 30 minutes at time and one-half rate; from 12:30 A. M. until 5:30 A. M., January 5th, 5 hours at double time rate; and from 5:30 A. M. to 7:30 A. M., January 5th, 2 hours at pro rata rate.

JOINT STATEMENT OF FACTS: Nick Covic worked his regular assignment as a B&B employe 7:30 A. M. to 12:00 noon, and 1:00 P. M. to 4:30 P. M. (8 hours), on January 4, 1946. He was instructed to travel from Chadron to Long Pine to make repairs to a crawler crane, departed from Chadron on train No. 12 at 4:40 P. M.; arrived Long Pine at 10:00 P. M.; worked at Long Pine 10:00 P. M., January 4th to 5:30 A. M. January 5th; and during period 5:30 A. M. to 7:30 A. M. was waiting for train to return to Chadron.

POSITION OF EMPLOYEES: Tour of duty and overtime service rendered by B&B employe, Nick Covic, on January 4th and 5th, 1946, is clearly outlined in the Joint Statement of Facts. As set forth therein, Covic worked his regular tour of duty from 7:30 A. M. to 4:30 P. M., January 4th at Chadron, for which he was properly paid at pro rata rate. He was then instructed to proceed to Long Pine to make repairs to a crawler crane; departed from Chadron at 4:40 P. M., arriving at Long Pine at 10:00 P. M. For that service traveling he was paid at pro rata rate under the application of Schedule Rule 43(a). Reaching Long Pine at 10:00 P. M., he immediately went to work in making repairs to the crawler crane; worked and completed the repair of crawler crane at 5:30 A. M. For that service from 10:00 P. M., January 4th, until 5:30 A. M., January 5th, he was paid at time and one-half rate. From 5:30 A. M. until 7:30 A. M., January 5th, Covic stayed at Long Pine awaiting a train to return to Chadron for which service he was paid at pro rata rate.

less than eight (8) hours each calendar day, when such irregular service prevents the employe from making his regular daily hours at home station. Where meals and lodging are not provided by the railway, actual necessary expenses will be allowed."

(Section (b), Rule 43, is not here involved. Rule 44 provides basis of compensation for employes required by the management to travel on or off their assigned territory in boarding cars, and Rule 47 refers to basis of compensation for employes temporarily or permanently assigned to duties requiring variable hours, working on or traveling over an assigned territory. The provisions of those rules are not involved in this case.)

For the time worked, the travel time and the waiting time as outlined in the Joint Statement of Facts, Covic was compensated as follows:

8 hours at pro rata rate for work performed 7:30 A. M. to 12:00 noon, and 1:00 P. M. to 4:30 P. M., January 4, 1946. 5 hours and 30 minutes at pro rata rate (Rule 43(a)) waiting and traveling 4:30 P. M. to 10:00 P. M., January 4, 1946. 7 hours and 30 minutes at rate and one-half for work performed 10:00 P. M., January 4 to 5:30 A. M., January 5, 1946. 2 hours at pro rata rate for waiting time 5:30 A. M. to 7:30 A. M., January 5, 1946.

and the only question involved in the claim of Covic is the proper basis of compensation, under schedule rules applicable, for the time he worked during period 12:30 A. M. to 5:30 A. M., January 5, 1946.

Rule 26 provides that employes will be compensated on basis of double time computed on actual minute basis after sixteen **continuous** hours of **work** in any twenty-four hour period computed from starting time of employe's regular shift. It is the position of the railway company that waiting or travel time, for which an employe is compensated at pro rata rate under rule 43(a), is not "work" as referred to in Rule 26, and that Covic did not perform sixteen or more continuous hours of **work** in the twenty-four hour period computed from 7:30 A. M., the starting time of his regular shift on January 4, 1946. It is also the position of the railway company that if travel time or waiting time was considered "work", the rules would provide for compensation on basis of overtime rules for such travel or waiting time after completion of eight hours of service on a day instead of on basis of pro rata rate as provided in Rule 43(a). It is therefore the further position of the railway company that the claim of Covic for double time compensation during period 12:30 A. M. to 5:30 A. M., January 5, 1946, is not supported by the provisions of schedule rules applicable and that such claim could not properly be sustained.

OPINION OF BOARD: This is a Joint Submission seeking an interpretation of the Overtime Rule.

That rule states:

"26. Except as provided in rule 29, time worked continuous with a regular eight hour work period shall be computed on the actual minute basis and paid for at time and one-half rates, with double time computed on actual minute basis after sixteen continuous hours of work in any twenty-four hour period computed from starting time of employe's regular shift."

The question to be decided is whether time spent traveling continuous with the regular work day may be included in computing the "sixteen continuous hours of work" as a basis for double time.

Petitioner's position appears to be that double time is payable after sixteen hours of "service" regardless of whether all that time was engaged in the performance of actual work.

Rule 26 was adopted at a special conference for revising the overtime rules and became effective as a supplemental agreement on December 16,

1944. However, it must be read together with the provisions of the principal agreement of April 1, 1936. The latter has a specific rule on travel time which, among other provisions, states:

“Travel or waiting time during the recognized overtime hours at home station will be paid for at pro rata rate.”

It is clear that under this rule “service” in traveling or waiting does not authorize the overtime rate but provision is expressly made for the pro rata rate. The new overtime rule has in no way modified or changed this rule and is in harmony with it.

Rule 26 is based throughout on “continuous work”. Overtime is given for time **worked continuous** with a regular eight hour work period. Double time is payable after sixteen **continuous hours of work**.

Accordingly, under the terms of the Agreement as revised travel time may not be considered as part of sixteen continuous hours of work as a basis for double time. The rule could not have intended that travel time could be a basis for double time although expressly not for the overtime rate.

It follows that 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of March, 1947.