

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ILLINOIS CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that under the application of Schedule Rule 38 (a), Section Foremen on the Kentucky Division who are required to report thirty (30) minutes in advance of the regular starting time for the purpose of receiving train line-ups, shall each be paid for thirty (30) minutes at time and one-half rate in addition to the monthly rate for each day they have been required to so report, retroactive to January 1, 1944.

EMPLOYEES' STATEMENT OF FACTS: Subsequent to January 1, 1944, section foremen on the Kentucky Division have been required to report thirty (30) minutes in advance of their regular assigned starting time for the purpose of receiving train lineups and have not been allowed any pay for this service.

Agreement dated September 1, 1934, and agreement dated December 16, 1944, is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Subsequent to January 1, 1944, section foremen on the Kentucky Division have been required to work eight hours and thirty minutes per day and have only been allowed pay for eight hours. The additional thirty minutes service has been required in advance of their regular starting time and is consumed in securing train lineups.

Under date of September 1, 1934, an agreement was entered into between the Carrier and the Brotherhood of Maintenance of Way Employees, which contained the following rule identified as Rule 39:

"Calls

Service in Advance of Work Period, Reporting and Not Used

Rule 39. All employees will be allowed time at the rate of time and one-half time for service performed continuous with and in advance of regular work period. All employees who have completed their work period for the day and have been released from duty not exceeding one hour, required to return for further service, will be paid as for continuous duty. All employees called for duty and reporting outside of regular working hours and not continuous therewith, either in advance of or following, will be paid a minimum of three hours for two hours' work or less and thereafter at the rate of time and one-half time. Hourly paid employees required to report at the usual starting time and place for the days work and when conditions prevent work being performed, will be allowed a mini-

Each Section Foreman employed by the Carrier supervises approximately 6 track laborers and it is inequitable to change a practice that has been in effect for over thirty-five years and in effect at the time the agreement was negotiated and subsequently revised on eight occasions.

Regarding the interpretation of agreements, this Division said, in Award No. 2436:

"It may be argued that the carrier never intended any such interpretation to be made, especially since the adoption of the current agreement on September 1, 1927. If such practices had been directly abrogated in the current agreement, this argument could readily be sustained. But the failure of the parties to deal directly with these practices in subsequent agreements and their recognition by the parties for more than fifteen years after the negotiation of the last collective agreement furnishes convincing proof that their abrogation was never intended. See Award 1435. The conduct of the parties to a contract is often just as expressive of intention as the written word and where uncertainty exists, the mutual interpretation given it by the parties as evidenced by their actions with reference thereto, affords a safe guide in determining what the parties themselves had in mind when the contract was made."

"We conclude therefore that the specified practices are not superseded by subsequent agreements and that they remain in force until such time as they may be eliminated by negotiation, a field entirely foreign to the powers of this Board."

It is the position of the Carrier, therefore, that it is the duty and responsibility of section foremen to secure lineups prior to the starting times of their gangs, in the same manner that this has been done by them for more than thirty-six (36) years, and that such duty and responsibility is comprehended by their established rates and that no extra, added, or penalty compensation is provided for them under the effective rules of the agreement. No rule in the effective agreement has been violated, and for this Board to sustain the employes in this claim it would have to write a new rule, and this it has no authority to do.

OPINION OF BOARD: This claim is based upon the fact that the Carrier requires its Section Foremen to report thirty minutes in advance of the regular starting time of their gangs for the purpose of receiving train lineups. The System Committee asks that the Section Foreman on the Kentucky Division, who are required to so report, be paid for this thirty minute period on an overtime basis for each day they have so reported since January 1, 1944 in addition to their monthly rate.

The record establishes that for many years, and commencing long prior to September 1, 1934, the Section Foremen of the Carrier have had to report from a few up to thirty minutes in advance of the regular assigned starting time of their gangs. This is done for the purpose of securing or receiving train lineups. They have not been paid for this time, other than their regular monthly rate.

Rule 35 (a) of the parties' agreement provides as follows:

"Employes whose responsibilities and or supervisory duties require service in excess of the working hours or days assigned for the general force will be compensated on a monthly rate to cover all services rendered, except that when such employes are required to perform work which is not a part of their responsibilities or supervisory duties, on Sundays or in excess of the established working hours, such work will be paid for on the basis provided in these rules in addition to the monthly rate. Section foremen required to walk or patrol track on Sundays shall be paid therefor on the basis provided in these rules in addition to the monthly rate. Supervisory forces shall be compensated on the same overtime basis as the men supervised when the general force is required to work in excess of eight (8) hours per day."

We think the duties here complained of are supervisory in character and part of these employes supervisory responsibilities that come within the provisions of Rule 35(a) and for which these employes are not entitled to additional compensation other than their monthly rate.

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 Employes involved in this dispute are respectively carrier and employes 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 has not violated 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 January, 1948.