

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim—Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

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

(1) That Section Foreman H. Thomas, in charge of Section No. 34, should have been called for overtime work required on that section on February 15, 1946, instead of calling Section Foreman L. Danielson, in charge of Section No. 32, for the performance of overtime work required on Section No. 34.

(2) That Section Foreman H. Thomas shall be paid fifteen and one-half (15½) hours at time and one-half rate on February 15, 1946.

EMPLOYEE'S STATEMENT OF FACTS: On February 15, 1946, Section Foreman H. Thomas, who is in charge of Section 34, completed his regular work period at 4:30 p.m. Notwithstanding the fact that it was snowing at the time and that it was apparent that it would be necessary to have a section foreman available to keep the switches on Section 34 free of snow, Mr. Thomas was instructed by his superior officer not to work any overtime. However, the same officer instructed Section Foreman L. Danielson, foreman on Section 32, and Track Laborer D. McGill, also employed on Section 32, to keep the switches on Section 34 free of snow. Section Foreman Danielson and Track Laborer McGill worked from 4:30 p.m. to 8:00 a.m., February 16, 1946, a total of fifteen and one-half (15½) hours.

Agreement between the parties is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 2 (a) of the agreement in effect between the Elgin, Joliet and Eastern Railway Company and the Brotherhood of Maintenance of Way Employees provides as follows:

"SENIORITY DATUM

Rule 2 (a): Except as otherwise provides in this rule, seniority begins at the time employee's pay starts, as of the last entry into the service of the Bridge and Building or Track subdepartment."

Rule 3 of the effective agreement provides as follows:

"CONSIDERATION

Rule 3: Rights accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service with the railroad as hereinafter provided"

In determining which of the two foremen should work the overtime on the two sections, preference was given to Foreman Danielson because of his seniority as a foreman. Both men are in the territory of the same Roadmaster, and this places them in the same seniority district by virtue of Rule 5 of the effective Agreement of December 1, 1945.

The Board's attention is respectfully invited to Award No. 2619, dated July 10, 1944, of this Division. That case is similar to the present case. In that case employes on a gang assigned to one section were given more overtime work on another section than the employes of the gang assigned thereto, during a period of emergency created by a flood. There the Board found that the Carrier had not violated the Agreement with its employes by thus exercising its discretion in relieving certain of its employees at this time of emergency.

As in the aforesaid case, the Carrier in the present controversy acted within its discretion during its struggle with the elements to keep the switches open. In view of these circumstances, the Carrier believes that this Board should find that the Carrier did not violate its Agreement with its employees and should deny the claim presented.

OPINION OF BOARD: Section Foreman H. Thomas, the claimant, and Section Foreman L. Danielson, were the foremen on adjoining sections, Section 34 and Section 32, respectively. Both men had as their regular hours 8:00 a.m. to 4:30 p.m. They both worked these hours on February 15, 1946. The superior officer of these two men then instructed the claimant not to work overtime and instructed Danielson and a track laborer of Section 32 to continue to work in order to keep the switches on Sections 32 and 34 free of snow. Danielson continued to work until 8:00 a.m. on February 16, a total of 15½ hours overtime. Both of these men had worked from 8:00 p.m. February 13 to 4:30 p.m. February 14, but both had rested from 4:30 p.m. on the 14th to 8:00 a.m. February 15th.

By reason of the above facts the claimant insists that he should be paid 15½ hours overtime because the overtime work on his section was his work and should not have been assigned to Danielson, the Foreman of Section 32.

The Carrier contends that since Danielson held seniority as a foreman over the claimant it was proper to assign this work to Danielson. It seems clear, however, that the seniority of section foremen throughout the territory of their Roadmaster applies only as to their procuring and holding positions and that seniority does not warrant giving a foreman assigned to one section any part of the work of a section assigned to another foreman.

The Carrier also contends that the Agreement only provides for a maximum of eight hours, 'does not guarantee overtime work to any employe' and specifically provides that "no overtime will be worked without authority of a superior officer, except in case of emergency."

The eight hour guarantee only provides for a minimum day of eight hours. We must assume that when a man bids for and is assigned to a regular position all of the work of that position, both regular and extra work, will be given to him except in case of an emergency when it is necessary to call in others to keep the railroad in operation.

The fact that claimant was not authorized to do this overtime work pursuant to Rule 30 cannot be used as a valid argument. If this work was work on his section his superior officer should have authorized him to do it.

Nor can the Carrier contend that claimant was not entitled to this work because the work was continuous with his regular tour of duty. It was work on his section and it does not matter whether it was continuous with his regular tour or whether it was necessary to call him back to do it.

Nor do the facts here seem to justify the claim of the Carrier that there was such an emergency as to justify its action. Both of these men had worked

the same hours on the 13th, 14th, and 15th. They had both rested from 4:30 p.m. on the 14th to 8:00 a.m. on the 15th. The record fails to show any necessity for their working during that night. Nor does the record show any continuance of the snow on February 16th.

These facts fail to show such an emergency as to justify the carrier in requiring that this extra work on Section 34 be done by the Foreman of Section 32, while the Foreman of Section 34 was not on duty.

When a claimant has been deprived of extra work to which he was entitled he should be paid for such work. See Awards 2716, 2717, 2994, 3627.

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 Employees involved in this dispute are respectively carrier and employees 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 violated the Agreement, as claimed.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1948.