

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim as presented by the System Committee of the Brotherhood:

(1) That the Carrier violated the effective Agreement by failing to compensate Sectionman I. S. Casey at punitive rates of pay for all services rendered during the period December 1, 1947 to April 10, 1948, while he was assigned to work of patrolling track near mile post 187, Section 31, of the Rocky Mountain Division;

(2) That claimant Sectionman I. S. Casey be reimbursed for the difference in pay received at pro rata rates and what he should have received at punitive rate for the hours worked by him during the above mentioned period.

EMPLOYEES' STATEMENT OF FACTS: I. S. Casey is employed as Sectionman in Section Crew 31, Rocky Mountain Division. The regularly assigned work period for this crew is from 8:00 A. M. to 5:00 P. M., with a one-hour lunch period.

Section Crew 31 was at the time this claim arose under the supervision of Section Foreman L. Parlante, and was composed of four and sometimes five Sectionmen.

On November 10, 1947, Mr. Casey was instructed by his Foreman to do work of flagging and track patrolling near Milepost 187 where the work of making line change was in progress. While so assigned, Casey worked from 9:30 P. M. to 8:30 A. M.

During the period from November 10, 1947 to November 30, 1947, inclusive, Mr. Casey was compensated at the time and one-half rate for services rendered outside his regularly bulletined hours. However, beginning with December 1, 1947 and continuing to April 10, 1948, inclusive, Casey was paid pro rata rate for the first eight hours of this temporary assignment, and three hours at time and one-half rate.

Immediately following the termination of this temporary assignment, April 10, 1948, Mr. Casey was returned to his regularly assigned hours—8:00 A. M. to 5:00 P. M. The position of Track Watchman to which Casey was temporarily assigned is classified as Track Department—Group 16. The position of Sectionman, Casey's regularly assigned position, is classified as Track Department—Group 10(c).

3449 based on a finding that the claimant was not given a new regular assignment. This award does not sustain the claim covered by this docket.

The Employees in their Statement of Facts state:

"The position of track watchman to which Casey was temporarily assigned is classified as Track Department—Group 16. The position of sectionman, Casey's regularly assigned position, is classified as Track Department—Group 10 (c)."

The apparent purport of this statement is to lay a foundation for a contention that Mr. Casey was removed from a position in one seniority class and assigned to a position in another seniority class. The work of flagging and patrolling track such as was performed by Mr. Casey from December 1, 1947 to April 10, 1948 is work generally performed by sectionmen. Therefore there is no foundation for a contention that Mr. Casey was removed from a position in one seniority class and assigned to a position in another seniority class.

The Employees themselves in appealing this claim on the property recognized that Mr. Casey was not removed from a position in one seniority class and assigned to a position in another seniority class. General Chairman Keyes in his letter of April 26, 1948 to Chief of Personnel H. W. McCauley, hereinabove quoted, said:

"The section crew on Section 31 having regular work period from 8:00 A. M. to 5:00 P. M. with one hour for lunch, and Casey, being one of the sectionmen employed in section crew on Section 31, and his time being reported on daily time reports submitted by the foreman on Section 31, **retained his status as sectionman** with regular work period being the same as that of the section crew in which he is employed, and is therefore entitled to compensation for service rendered on the basis of the regular work period for the section crew on Section 31." (Emphasis ours.)

Mr. Keyes' plain statement that Mr. Casey retained his status as a sectionman while flagging and patrolling the track during the period December 1, 1947 to April 10, 1948, inclusive, voids any implication that Mr. Casey's status was changed from that of a sectionman to that of a track watchman.

The facts in this case show that service requirements necessitated patrolling and flagging the track between the hours of 9:00 P. M. and 8:30 A. M. for more than four months; that Mr. Casey upon being given 36 hours advance notice had the starting time of his assignment changed; that Rule 35 of the current Maintenance of Way Agreement does not prohibit changing the starting time of the work period of an employee to meet service requirements; that as Mr. Casey had the starting time of his assignment changed to meet service requirements he is not entitled to payment at time and one-half rate instead of at straight time rate for work performed outside the hours of the regular assigned section crew. The claim should therefore be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood contends that Claimant, Sectionman I. S. Casey, should have been paid at overtime rate for all services he performed during the period from December 1, 1947 to April 10, 1948, inclusive, while patrolling track for the Carrier near Mile Post 187, Section 31 of Carrier's Rocky Mountain Division and that Carrier violated their Agreement when it failed to do so. It now asks that he be compensated accordingly, that is, the difference between what he would have received, if paid at overtime rate for all service performed, and what he actually received.

The record shows that during the period herein involved Claimant was paid at time and one-half for all work performed on Sundays and Holidays and for all work performed on week days in excess of eight hours. Consequently, the claim here made involves the first eight hours of work performed on each week day during this period, for which he was paid on a pro rata basis and for which he now contends he should have been paid at time and one-half rate.

Claimant was employed as a Sectionman and assigned to Section Crew 31, Rocky Mountain Division with Headquarters at Superior, Montana. His regularly assigned hours were from 8:00 A. M. to 5:00 P. M. daily, except Sundays and holidays, with one hour for lunch. In the latter part of 1947 and the forepart of 1948 dirt and rock slides occurred on Carrier's property near Mile Post 187 in the vicinity of Superior, Montana. This made it necessary for Carrier to flag and patrol the track in this territory. Claimant was instructed to do this work and did so, commencing on November 10, 1947. His hours of service were from 9:00 P. M. to 8:30 A. M. From November 10, 1947 to November 30, 1947, inclusive, he was compensated for all services rendered at the overtime rate.

Carrier, realizing that this condition would last for an extended period of time notified Claimant, more than 36 hours prior to December 1, 1947, that effective that date his starting time would be 9:00 P. M., with daily assigned hours from 9:00 P. M. to 8:30 A. M. He thereafter continued to do this flag and patrol duty until April 10, 1948. During this period Claimant was paid at his regular rate of pay for the first eight hours of service on all week days and at overtime for all hours in excess thereof and at overtime rate for all work performed on Sundays and holidays. Effective April 12, 1948, Carrier having given proper notice, Claimant was returned to work with Crew 31 and his hours reassigned from 8:00 A. M. to 5:00 P. M.

Carrier contends that under Rule 35 of the parties' effective Agreement it had the right to change Claimant's starting time. Rule 35 provides as follows:

"The starting time of the work period shall be based on actual service requirements, but there shall be no change without thirty-six (36) hours' advance notice."

This is a specific rule on the subject matter before us. Under it Carrier can, when it is necessary to meet actual service requirements, assign separate starting times for the work period of different members of a gang, provided it is done for a reasonable period of time and not for the purpose of avoiding the payment of overtime. This the record shows, has been the manner in which it has been applied by the parties on this property. For similar holdings see Award 3039, 3156, 4109 and 4194 of this Division.

Carrier having the right to assign Claimant to do this work, the conditions existing at this point on the Carrier's property, due to possible dirt and rock slides, actually making it necessary to have this service of flagging and patrolling performed during the hours Claimant was assigned thereto, and the period of time over which it was required to be done being of such duration that it cannot be said it was done for the purpose of avoiding overtime, we find that Carrier, under Rule 35, was authorized to assign Claimant to the hours it did and consequently, has properly paid him for the services that he performed.

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 has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of August, 1949.