

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE WESTERN PACIFIC RAILROAD COMPANY**

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

(1) That the Carrier violated the Agreement dated November 1, 1929, when they called Section Foreman Frank L. Chickey to work outside of his regular hours of service and refused to compensate him under the provisions of the applicable rules:

(2) That Section Foreman Frank L. Chickey be compensated in the amount of two (2) hours and forty (40) minutes at his time and one-half rate for work performed, not continuous with his regular work period on August 6, 1948.

EMPLOYEES' STATEMENT OF FACTS: On August 6, 1948, Mr. Frank L. Chickey was employed as Section Foreman on Section 34 at Tobin, California, and was regularly assigned from 7:30 A.M. to 11:30 A.M. and from 12:30 P.M. to 4:30 P.M. Foreman Chickey was called to work at 5:20 A.M. on the morning of August 6, 1948 to meet train No. 40 and to receive a number of section laborers arriving on this train. He was required to escort them to their living quarters, assign them their bunks, and in general, familiarize them with their future quarters.

Foreman Chickey submitted overtime claim for this work which constituted a call of two (2) hours and forty (40) minutes, and payment of claim was declined.

The Agreement between the two parties to this dispute, dated November 1, 1929, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: There is an Agreement between the Western Pacific Railroad Company and the Brotherhood of Maintenance of Way Employees, in which Rule 24 of this Agreement, captioned "Day's Work", reads as follows:

"Except as otherwise provided in these rules, eight (8) consecutive hours, exclusive of meal period shall constitute a day's work."

It will be noted that Rule 24 provides that eight (8) consecutive hours, exclusive of meal period shall constitute a day's work. Section Foremen are assigned on the basis of eight (8) hours per day and are compensated for all work in excess thereof in the manner provided in Rule 33.

"It is conceded that the duties performed by Korojohn in this instance do not come within the exceptions set forth in United States Railroad Labor Board's Decision No. 1364. My decision of November 6, 1940, is reversed and claim is allowed."

Rule 38 is clear, and it cannot be disputed that there is to be no extra payment for any service or function which is a part of the "responsibilities or supervisory duties" of a section foreman, and accordingly, you are urged to deny the claim.

All of the above has been presented to the employees. Unless requested by them, oral hearing is waived by Carrier.

OPINION OF BOARD: On August 6, 1948, claimant was employed as section foreman at Tobin, California, and was regularly assigned 7:30 A.M. to 4:30 P.M. with a one-hour lunch period. Claimant was called to work at 5:20 A.M. on this date to meet a train and receive a number of section laborers arriving by train. He was required to escort them to their living quarters, assign their bunks and generally look after their best interests. The claim is for a "call".

The controlling rule of the Agreement provides:

"Rule 38.—Supervisory Employees. Employees 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 employees 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."

We are of the opinion that the responsibilities and supervisory duties referred to in the foregoing rule mean those duties which are incidental to the primary duties of the position and which arise out of the work of the position. It would include the making of reports, the securing of train line-ups, and the like. Supervisory duties as here used have been defined "as making up payrolls, reports, correspondence, cleanliness of outfits, meeting supervisory officers after regular hours or on Sundays, studying blue prints, preparing plans or ordering material required in their work." Docket M-714, Railway Board of Adjustment No. 3, bearing date of July 30, 1920. It is noteworthy that immediately following the portion of the award heretofore quoted, the Board said: "All other work in excess of eight hours or on Sundays is overtime." The decision clearly sustains the position of the Organization. We do not think that Rule 38 was intended to deprive the claimant of a "call" under the situation here described. The rule before us was written into the Agreement after the Railroad Board of Adjustment had interpreted it. The carrying of the rule forward into the collective Agreement in the same form carries with it the interpretations previously placed upon it in the absence of a manifested intent to do otherwise. The claim is valid.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of December, 1950.