

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

Adolph E. Wenke, Referee

---

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

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

(1) That Brown Hoist Engineers Roland Smith and Clair Smith were improperly compensated on June 28, 29 and 30 and July 1, 2 and 6, 1948;

(2) That Roland and Clair Smith be paid at the rate of time and one-half for all service rendered outside of the hours of their regular assignment on the days referred to in Part (1) of this claim;

(3) That Roland and Clair Smith be paid at their straight time rate of pay for all hours in their regular assignment which they were denied the right to work on the days referred to in Part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** Prior to June 28, 1948, Roland Smith and Clair Smith were regularly assigned as Brown Hoist engineers between the hours of 7:00 A. M. and 4:00 P. M., including a one hour meal period.

It was then determined by the Carrier that it was imperative to accelerate the loading of storage coal at Yatesboro, Pennsylvania. Accordingly, prior to June 22, 1948, Engineers Roland Smith and Clair Smith were verbally notified of the intended change in operation. They were informed that commencing June 28, 1948, Brown Hoist X-228 would be operated from 4:00 A. M. to 8:00 P. M. Inasmuch as the intended operation constituted a change in their working period, Engineers Roland Smith and Clair Smith were requested to submit their individual choices as to the hours they desired to work. Consequently, Roland Smith was assigned to work from 4:00 A. M. to 12:00 Noon, and Engineer Clair Smith was assigned to work from 12:00 Noon to 8:00 P. M.

In verifying these assignments the Carrier notified the individuals affected by giving them notification which was sent through the United States mail. Engineers Roland Smith and Clair Smith performed service on these assignments in the period June 28 through July 2, 1948, inclusive, and on July 6, 1948; no coal being loaded on July 3, 4 and 5, by reason of the Holiday falling within that period.

On June 25, 1948, the Claimants advised the General Chairman of the Brotherhood, Mr. W. N. Clay, that effective June 28, 1948, they would be

for this violation the penalty has been paid. It is true that claimants were regularly assigned 8:00 A.M. to 5:00 P.M. prior to March 18, but Rule 33 provides a method for changing such regular assignments. When the conditions exist that warrant such change and all restrictive provisions are met, the new assigned hours become the regular assignment. It is undoubtedly true that the new assignments were made to avoid working employees more than eight hours in one day. The purpose of the punitive rate as it applies to overtime is to penalize the Carrier for working an employee in excess of eight hours in any one day. Its purpose is not, as some seem to suppose, to create work for which time and one-half may be demanded. The overall effect of Rule 33 is to create a uniform starting time and make the work as convenient for the employees as is possible, but where the exigencies of the service require otherwise, a method is provided whereby service requirements can be met without penalizing the Carrier. The assignments of these claimants are in accordance with the provisions of Rule 33 which are here involved and, consequently, no violation of Rules 39(a) and 40(c) exist."

In its Findings this Division held in part "The Agreement was not violated." Claim in this case was denied.

The Carrier submits the immediate comparability between the circumstances to be found in Award 4194 and those confronting the Division in the instant dispute.

On this basis the Carrier submits the Division has already rendered judgment on the fundamental principle involved in this case.

On this basis, the Carrier submits the Awards of this Division do not support this request.

On the basis of all that is to be found herein the Carrier respectfully requests the Division to hold this claim as being one without merit and to deny it accordingly.

**OPINION OF BOARD:** The System Committee of the Brotherhood contends Brown Hoist Engineers Roland Smith and Clair Smith were improperly compensated on June 28, 29 and 30 and on July 1, 2 and 6, 1948. It asks that they be paid on these days at the rate of time and one-half for all services rendered which was outside of the hours of their regular assignment. It also asks that they be paid straight time for all hours of their regular assignment whether worked or not.

Prior to June 28, 1948 claimants were both regularly assigned Brown Hoist Engineers at Carrier's Yatesboro, Pa., facilities with hours of duty from 7:00 A.M. to 4:00 P.M., including one hour for lunch. Because a shortage of coal then existed on the Carrier's Buffalo Division, and because labor disturbances existed in the mining industry, Carrier found it necessary to accelerate the loading of coal at its Yatesboro, Pa. facilities by putting the operations there on a twenty-four hour basis as of June 28, 1948. Prior to June 22, 1948 claimants were verbally notified of the intended change and informed that commencing June 28, 1948 Brown Hoist X-228 would be operated from 4:00 A.M. to 8:00 P.M. and X-221 from 7:00 A.M. to 3:00 P.M. They were requested to submit their choice as to the hours each desired to work. As a result of their choices Carrier notified claimants by mail on June 22, 1948 that Claimant Roland Smith was assigned to X-228 from 4:00 A.M. to 12:00 Noon and Claimant Clair Smith to X-228 from 12:00 Noon to 8:00 P.M. Claimants worked the hours of their assignments on June 28, 29 and 30 and on July 1, 2 and 6, 1948. No work was performed on July 3, 4 and 5, 1948, as a holiday was included in that period. Following July 6, 1948 claimants' assignments were returned to the same hours they held prior to June 28, 1948.

Carrier complied with the requirements of Rule 46 of the parties' agreement effective April 17, 1930 in making the change in starting time of

these regular assignments if, under the situation as existed on the property at the time such change was made, it was authorized to do so.

Rule 47 of the parties' effective agreement provides:

"Employees working single shifts, regularly assigned exclusively to day service, will start work period between 6:00 A. M. and 8:00 A. M."

Rule 48 thereof provides:

"For regular operations necessitating working period varying from those fixed for the general force as per Rule 47, the hours of work will be assigned in accordance with the requirements."

The work here performed was regular operations of the Carrier at Yatesboro, Pa., but, because of the increase thereof to meet a shortage of coal on the Buffalo Division and the limitation of Carrier's equipment at the Yatesboro facility needed for that purpose, its performance necessitated working periods varying from a single shift, as fixed by Rule 47 of the agreement for the general forces. Rule 48 of the parties' agreement expressly provides when regular operations necessitate working periods varying from those fixed by Rule 47 for the general forces that the hours thereof may be assigned to meet the Carrier's operational requirements. This the Carrier did.

In Award 4194 of this Division, which involved a like situation under a comparable rule intended for the same purpose, it was stated: "When the conditions exist that warrant such change and all restrictive provisions are met, the new assigned hours become the regular assignment." The Award goes on to state that the fact the work may be of short or long duration is not a controlling factor.

Awards 3784 and 4109 of this Division are not here in point, nor controlling, because they do not involve any rule comparable to Rule 48 of the parties' agreement herein involved and upon which this Award is based.

We find Carrier acted within its rights in doing what it did.

**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 Carrier did not violate 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 31st day of January, 1951.