

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

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

(1) The Carrier violated the effective agreement on July 18, 19 and 20, 1950, when they failed to compensate the Section Crews at Parsons and Oswego, at the double time rate of pay for work performed in excess of sixteen (16) hours per day in each twenty-four hour period, computed from the assigned starting time of the employees' regular shift;

(2) The employees engaged in the above referred to work, be paid the difference between what they did receive at the time and one-half rate and what they should have received at the double time rate for all work performed in excess of sixteen (16) hours in each twenty-four hour period computed from the assigned starting time of the employees' regular shift, on the dates referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On July 18, 1950, the members of Section Crew No. 201, Parsons, Kansas, worked the hours of their regular assignment. At that time, conditions were such that a hard rain had caused the creeks and water runs on the territory to be filled to a point where they constituted a potential danger to the adjacent Railroad roadbed.

At 5:00 P.M., the regular assigned quitting time for the employees assigned to Section Crew No. 201, they were temporarily released and each employee went to his respective home for his evening meal. At the time of release, it was not definitely determined whether or not the employees would have to return to service that evening.

Sixty minutes later or at 6:00 P.M. on the evening of July 18, the members of Section Crew 201 were recalled to duty to patrol track and observe the flood conditions in the area.

As the creeks were filled to the top of their banks and still rising, the employees continued to work all night and through the hours of their regular assignment on July 19, 1950, when they were again temporarily released pending recall.

separate and distinct from their regular work. Both gangs quit work at 5:00 P. M. and returned to work at 6:00 P. M. and 7:00 P. M., respectively, without being called, to patrol and protect their respective sections account heavy rains. Under these facts and circumstances no basis exists for contending or holding that these men worked after sixteen continuous hours computed from the starting time of the employees' regular shift July 18, 1950.

July 19, 1950, time and labor distribution records, as indicated above, definitely show that Foreman Garton and gang worked from 12:00 A. M. to 5:00 P. M., excluding meal period 12:00 Noon to 1:00 P. M.—patrol track—watch high water account heavy rains on his section. Foreman Thomas reports he and his gang worked their assigned hours on regular work on this date and overtime beginning at 5:00 P. M., sand bagging account high water. Foreman Garton shows he and one laborer assisted Section 164 (Thomas) Joplin Division account high water MP 404 from 6:30 P. M., July 19 to 4:00 A. M., July 20, 1950, and one laborer worked from 6:00 P. M., July 19 to 1:00 A. M. July 20, 1950. Foreman Boone reports he and his gang worked their assigned hours on regular work July 19, 1950 and he and one laborer worked 6:00 P. M., July 19 to 1:00 A. M., July 20, 1950, sand bagging Br. S-403.5 on Section 164 (Thomas). Division Engineer, Mr. L. R. Deavers, was at Garvin, July 19, 1950 and called both Garton and Boone, after 5:00 P. M. for emergency service on Section 164, which, according to reports as indicated above, did not arise until Foreman Thomas on Section 164 had completed his day's work on regular duties. This is not denied by Petitioner and definitely shows that overtime service performed by Foreman Garton and Boone, after their regular tour of duty on July 19, 1950, was separate and distinct from their regular work. Both gangs quit work at regular quitting time and were called back shortly thereafter for special or emergency work on another section. Further, Foreman Boone did not work after sixteen continuous hours computed from regular starting time July 19, 1950, as he and one laborer went off duty at 1:00 A. M., July 20, 1950. Under these facts and circumstances no basis exists for contending and holding that these men worked after sixteen continuous hours computed from the starting time of the employees' regular shift July 19, 1950.

As no overtime was worked after 5:00 P. M., July 20, 1950, and continuous therewith, no basis for claim for additional overtime compensation on that date exists.

No evidence of any character or description having been submitted by the Petitioner to the Carrier to support the claim, and the foregoing evidence definitely and conclusively showing no additional overtime compensation is due under the Agreement rules, facts and circumstances here involved, it is evident the claim is without merit and should be denied.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employees or their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim here is that Section Crews, or employees from such crews, on July 18, 19 and 20 worked more than 16 continuous hours in 24-hour periods commencing with the assigned starting time of the employees' regular shift and therefore they are entitled to the double time rate for the excess over 16 hours.

If they did so work after 16 hours the claim is valid and should be sustained. The Carrier says that no employees did so work.

The rule provision upon which the determination depends is in Article 9, Rule 2 of the effective Agreement as follows:

"Rule 2. Time worked preceding or following and continuous with a regularly assigned eight-hour work period shall be computed on actual minute basis and paid for at time and one-half rate, with double time computed on actual minute basis after sixteen continuous hours of work in any twenty-four hour period computed from starting time of the employee's regular shift. * * *"

It is to be observed that work in advance of and continuous with the eight-hour work period is compensable at the time and one-half rate. If it is after and continuous with the eight-hour period it is compensable at the time and one-half rate, unless the time worked exceeds 16 hours in which case the excess over 16 hours in any 24-hour period is compensable at double time. It, therefore, is not necessary to take into consideration here the question of whether or not any employees worked in advance of their regularly assigned work period.

The regularly assigned work periods of all employees involved here were from 8:00 A.M. to 5:00 P.M. A 24-hour period for them within the meaning of the work in excess of 16-hour provision was from 8:00 A.M. on one day to 8:00 A.M. on the following day.

One crew worked its regularly assigned period on July 18, 1950. In order for them, or some of them, to be entitled to pay at the double time rate as claimed it must be shown that continuous with the assigned period they worked more than 8 additional hours.

In point of fact the employees did not so work. They were released at 5:00 P.M. and returned to work at 6:00 P.M. and remained on duty thereafter until 8:00 A.M. on the 19th. This was the end of the day commencing on the 18th and the beginning of the day commencing on the 19th within the meaning of the Rule provision. In point of fact they worked more than 16 hours within a period of 24 but the excess hours were not continuous with the regularly assigned eight-hour work period. They were separated by one hour.

Without setting out the details there was on the other days a like or similar separation of the extra work from the regularly assigned eight-hour work period, and likewise no actual continuous period of more than 16 hours.

It should be pointed out here that continuous work on separate days may not be added together and thus the provision be made applicable. The following from the Rule points out that each day must be treated separately:

"* * * If held on duty or required to work in excess of 24 hours they shall receive time and one-half and/or double time as the case may be on the same basis as the original 24-hours of duty. * * *"

The Organization does not deny these breaks in continuity of work. They urge substantially, however, that they should not be regarded as breaks but rest or meal periods while the employees were engaged in continuous duty.

Had these men been held for these periods there would have, without question, been continuous duty and under decisions they would have been entitled to be compensated under the 16-hour provision of the Rule. The facts, however, are that they were released. The motives involved may not be considered. The decision must be controlled by the rules and the facts as they appear in the record. On the record it must be said that no compensation at the double time rate is allowable.

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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1952.