

Award No. 10494
Docket No. MW-8484

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA
RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of B&B crew supervised by Foreman Kleinberg, consisting of Foreman Henry Kleinberg, Carpenters Donald Stark, Le Roy Peters, William Reise, Duane J. Andrews, Leo Starzl, Harry Prokop and Henry Montgomery and Pile Driver Operator Harold Bergerson, for difference between payment allowed and time and one-half rate for service performed on June 15, 16, 17, 18, 19, 22, 23, 24, 25 and 26, 1953.

JOINT STATEMENT OF FACTS: In the early part of June 1953 heavy rains occurred in Southwestern Minnesota and Northwestern Iowa culminating on or about June 7 in a flash flood which washed out or severely damaged several bridges on the Western Division of this carrier. Included in these were the bridge across the Floyd River at Alton and bridges at Harpers, Medelia and LeMars.

Material was assembled to replace or restore said bridges and six of the seven B&B crews holding seniority on and assigned to the Western Division were assigned to the work of replacing and/or restoring the bridges. Claimants on the dates involved in this claim, with other B&B crews, replaced the bridge at Alton and worked on the bridge at Harpers. Attached hereto as Joint Exhibit No. 1 is a statement showing the hours worked by each claimant on each of the days involved in this claim. For the service performed claimants were paid at the overtime rate from time called until their usual starting time, straight time during the eight hours of their assignment and overtime rate from then until released each day. Claim has been presented that these men should have been paid at overtime rate from the time called each day until released on each day on which called in advance of their usual starting time.

Rules 27 and 28 of the controlling agreement provide the basis for payment for "overtime" and "calls", and in their entirety provide:

"OVERTIME 27. (a) Time worked preceding or following and continuous with a regular eight hour work period (exclusive of meal period) shall be computed on the actual minute basis and paid for at time and one-half rates, with double time computed on actual minute

There we have a photostatic copy of the time roll report for the second pay roll period of June and we find that the claimant employes worked **fifteen (15) hours on Saturday, June 20, 1953; fifteen (15) hours on Sunday, June 21, 1953 and eleven (11) hours on Saturday, June 27, 1953.**

We find twelve **consecutive** days in which considerable over-time service was performed, including **two Saturdays and one Sunday (15) hours** on one Saturday and one Sunday and eleven hours on one Saturday; we find one day on which **fourteen hours** of work was performed; ten days on which **fifteen hours** of work was performed and one day of eleven hours.

On June 27, 1953, the Employes worked eleven hours and then eight hours on the regular work days thereafter. The reason was that, at the end of eleven hours' work on June 27th, track and bridges had been sufficiently repaired to permit train operations and the emergency then ceased to exist.

The fact that the employes were required to work fifteen hours each day on Tuesday, Wednesday, Thursday, and Friday (June 16, 17, 18 and 19, 1953); the same number of hours on rest days, **Saturday and Sunday, June 20 and 21, 1953; fifteen hours on Monday, June 22; fourteen hours on Tuesday, June 23; fifteen hours each on Wednesday, Thursday and Friday, June 23, 25 and 26, 1953; and eleven hours on a rest day, Saturday, June 27, 1953;** upon the expiration of which tracks and bridges had been sufficiently repaired to permit restoration of train operations certainly proves that an emergency existed.

The balance of the "REPLY OF CARRIER TO POSITION OF EMPLOYES" not herein commented upon, is nothing more or less than repetition of what the Carrier has previously stated and to which the Employes have already made reply.

We again request that our claim be allowed.

The foregoing joint submission, consisting of "Statement of Claim", "Joint Statement of Facts", "Position of Employes", "Position of Carrier", "Employes' Reply to Carrier's Submission", "Reply of Carrier to Position of Employes", and "Employes Reply to Reply of Carrier to Position of Employes", together with the Exhibits attached hereto, constitute in their entirety the parties submission in this case. The parties are in agreement and affirmatively state that all information contained herein has been submitted by them to the other party during the course of handling of this case on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute was submitted under a Joint Statement of Facts which states in part as follows:

"In the early part of June 1953 heavy rains occurred in Southwestern Minnesota and Northwestern Iowa culminating on or about June 7 in a flash flood which washed out or severely damaged several bridges on the Western Division of this carrier. Included in these were the bridge across the Floyd River at Alton and bridges at Harpers, Medelia and LeMars.

"Material was assembled to replace or restore said bridges and six of the seven B&B crews holding seniority on and assigned to the Western Division were assigned to the work of replacing and/or

restoring the bridges. Claimants on the dates involved in this claim, with other B&B crews, replaced the bridge at Alton and worked on the bridge at Harpers. Attached hereto as Joint Exhibit No. 1 is a statement showing the hours worked by each claimant on each of the days involved in this claim. For the service performed claimants were paid at the overtime rate from time called until their usual starting time, straight time during the eight hours of their assignment and overtime rate from then until released each day. Claim has been presented that these men should have been paid at overtime rate from the time called each day until released on each day on which called in advance of their usual starting time.

"Rules 27 and 28 of the controlling agreement provide the basis for payment for "overtime" and "calls", and in their entirety provide:

'OVERTIME 27. (a) Time worked preceding or following and continuous with a regular eight hour work period (exclusive of meal period) shall be computed on the actual minute basis and paid for at time and one-half rates, 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 employee's regular shift.

'Employees required to work continuously from one regular work period into another in an emergency shall be paid at the rate of time and one-half for such regularly assigned hours until relieved from such emergency work and pro rata rate for the remainder of time working during regular work period. For example —

'Regular assignment 8:00 A.M. to 5:00 P.M. Go into emergency work at 3:00 P.M. and work in such emergency until 10:00 A.M. the following day, finishing the day on their regular work.

'will be compensated as follows:

3:00 P.M. to 5:00 P.M. — pro rata rate
 5:00 P.M. to 1:00 A.M. — rate and one-half
 1:00 A.M. to 8:00 A.M. — double rate
 8:00 A.M. to 10:00 A.M. — rate and one-half
 10:00 A.M. to 5:00 P.M. — pro rata rate.

"If required to work continuously beyond the second regular work period will be similarly compensated on basis provided in paragraphs one and two hereof. In the application of this rule to new employees temporarily brought into the service in emergencies, the starting time of such employees will be considered as of the time that they commence work or are required to report.

'CALLS 28. Except as otherwise provided in these rules, employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of two hours and forty minutes pay at rate and one-half for two hours and forty minutes work or less. If held on duty in excess of two hours and forty minutes rate and one-half will be allowed on the minute basis, computed from time called until released from the emergency work for which the call was made. If at the conclusion of the emergency

work for which call is made employees continue in service on regular section work they will be paid pro rata rate for the balance of the time of their regular work period. For example —

'Called at 10:00 P.M. for emergency work and work in such emergency until 10:00 A.M. the following day, resuming regular section work for balance of regular hours of assignment.

Allowance —

10:00 P.M. to 10:00 A.M. — rate and one-half
10:00 A.M. to 5:00 P.M. — pro rata rate
(exclusive of meal period)

'Emergencies referred to herein include washouts, high water, snow blockades, fires, tornadoes, wrecks or other conditions beyond control of the carrier.' "

The issue here is whether the Carrier used the proper method of payment for the work performed on the dates indicated in the claim.

The Carrier relies on Rule 27(a) and states that rule clearly provides that only the work preceding or following the regular eight-hour period will be paid at the overtime rate. It also points out that Rule 28 applies only to work where employees are notified or called to perform work "not continuous with the regular work period," and such was not the case here. The Carrier also contends there was no emergency existing here.

The Organization relies on Rule 28 and the Memorandum of Agreement between the parties which provides as follows:

"Rule 28, provides in part, '* * * employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of two hours and forty minutes pay at rate and one-half for two hours and forty minutes work or less. If held on duty in excess of two hours and forty minutes rate and one-half will be allowed on the minute basis, computed from time called until released from the emergency work for which the call was made.' The rule further defines an emergency and states in part:

'Emergencies referred to herein include washouts, high water, snow blockades, fires, tornadoes, wrecks or other conditions beyond control of the carrier.' "

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They also point out that the Carrier has, in the past allowed similar claims at the penalty rate and then formally asked the Organization to meet and change the conflict between Rule 27 and Rule 28. They show that there were several conferences and then the Carrier agreed to close out this revision and let the claim progress to this Division.

Rule 27(a) clearly provides that only the work preceding or following the regular eight hour period will be paid at the overtime rate. Rule 28 applies only where employees are called to perform work "not continuous with the regular work period." Such was not the situation here. As to the assertion of the Organization that the Memorandum of Agreement controls here and that the overtime rate should be paid, it should be pointed out that this

contract applies to "section forces" and to "regular section work," not to Bridge and Building employees. While this argument was first raised at the panel argument it involves an interpretation of a contract, not a question of fact and the Carrier may properly do so. While it may well be that if a "section force" had been involved that the Memorandum of Agreement would control and require overtime payments such is not the case here where B & B forces were the claimants. Past settlement of claims on the property have no bearing here for they involve section forces not Bridge and Building Employees.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1962.