

Award No. 10975
Docket No. MW-10584

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ERIE RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it refused to compensate Section Foreman M. A. Johnson for services rendered during hours outside of and not continuous with his regularly assigned work period on November 22, December 28, 1956, January 4, 7, 8, 9, 11, February 28 and March 9, 1957 at which times he was required to arrange for and provide relief for snow emergent conditions and/or to supervise work at a derailment and/or immediately supervise snow removal work.

(2) Section Foreman M. A. Johnson now be allowed payment for nine (9) calls in accordance with Rule 21 of the effective Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Claimant employe is a Section Foreman and is regularly assigned to and has jurisdiction over Section No. 3, with headquarters at Jamestown, New York. He is regularly assigned to work on Monday through Friday of each week, excluding the seven holidays designated by Agreement. His regularly assigned daily tour of duty is assigned to start at 7:30 A. M. and to continue to 12:00 Noon, at which time a meal period is taken from 12:00 Noon to 12:30 P. M., followed by the afternoon tour of duty from 12:30 P. M. to 4:00 P. M.

A very essential and integral part of a Section Foreman's position is the work of calling members of his crew at various hours of the day or night for the purpose of performing emergency service.

Many Section Foremen, including the claimant, subscribe to commercial telephone service, principally for the purpose of expediting receipt of and response to calls from the Carrier for instructions to report for emergency overtime hours. The use of commercial telephone eliminates the need for the Carrier to deliver such notes by messenger. Section Foremen maintain com-

instant cases were detected, the Claimant informed the Supervisor that he was acting upon advice given to him by the General Chairman.

The Carrier has shown that for a period of twenty-four years no payment has been made under the terms of Rule 21 unless the employe or employes called thereunder actually reported for duty or had left home before the call was cancelled. The meaning and intent of the rule up to the present case had never before been questioned. This was so both before and after the current agreement. This is not to say, however, that the Organization has not requested a change in the call rule which would have provided that time would begin when called.

During the negotiations which resulted in the current agreement, the Organization submitted a proposal to amend the call rule and include among other changes therein the following:

"Employees' time will begin when called and end when returned to regular assigned headquarters or home station . . ."

Rule 21 of the current agreement is best evidence of the fact that the Organization's proposal was not adopted and this in turn clearly shows that the Organization fully understands that the rule as it now reads does not require any payment whatsoever, unless the employe called actually reports for work consistent with the terms of Rule 18.

The record shows that the Claimant named in the statement of claim did not report for work on any of the dates in question, under the terms of Rule 18 and 21. Therefore, there was no violation of the Agreement and it necessarily follows that the Claimant is not entitled to the compensation which he claims.

All data herein submitted in support of Carrier's position have heretofore been discussed with Claimant's Representative or known to him.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Brotherhood of Maintenance of Way Employees and The Erie Railroad Company.

On the dates involved the Claimant (Section Foreman) was called and directed to call from one to three men to work. The work claimed is that of calling other men.

"RULE 15

"(a) The following employes will be paid monthly salary which covers eight (8) hours per day, five (5) days per week:

"Section Foremen
Assistant Section Foremen
Extra Gang Foremen
Assistant Extra Gang Foremen
Dock Builder Foremen
Carpenter Foremen
Painter Foremen
Marine Pile Driver Engineers
Pile Driver Engineers

Crane Engineers
Shovel Engineers
Ditcher Engineers
Spreader Operators
Cribbing Machine Operators
Ballast Shaper Operators
Ballast Cleaning Machine Operators
Power Ballast Operators

"The above employes will be paid, in addition to their monthly rate for time worked in excess of eight (8) hours on any day under Rule 19; for call under Rule 21; and for time worked on rest days and holidays under Rule 20. Preparation of time slips or related work after expiration of tour of duty shall not be considered work to be paid for in accordance with the above rules. To determine hourly rate for above monthly rated employes divide monthly rate by 169 1/3 hours.

"(b) Plumber Foremen
Work Equipment Foremen
Assistant Work Equipment Foremen
Welding Foremen

"The above employes will be paid a monthly rate which will be governed by the provisions provided for in memorandum of agreement dated August 30, 1949."

The Board finds that the calling of crews is part of "or related work." The Petitioner recognizes that the calling of crews is part of the supervisory duties of the Claimant, but contends that such work is not part of "or related work."

Award 8131, is relied upon by Petitioner. The Board found in that award that the work performed was not a part of their responsibilities or supervisory duties. Herein the Claimant admits that the work complained of is part of his supervisory duties.

We cannot find from the Agreement the intent to pay the Section Foreman for such work.

For the foregoing reasons we believe the Agreement was not violated.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1962.