

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20460
Docket Number MW-20537

William M. Edgett, Beferee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(**The Akron, Canton and Youngstown Railroad Company**)

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

(1) The Carrier violated the Agreement when it failed and refused to allow certain employer (named in Parts (2) and (3) below) to work their regular **assignment** between 7:30 A.M. and 4:00 P.M. on July 20, 1972 and, as a consequence thereof

(2) **Trackmen** D. Williams, M. E. Spencer, L. J. Keysar, E. Szalabawka, D. W. Miller, E. Picklesimer, E. Damron and E. Ratliff each be allowed four (4) hours of pay at their straight-time rates

and

(3) Extra **Gang Employes** O. S. Langford, J. L. Farnsworth, J. R. Knipp and B&B **Employes** Ambrose Williams, Frederick Newman and Mark **Stein-gass each** be allowed three and one-half (3-1/2) hours of pay at their respective **straight-time** rates.

OPINION OF BOARD: After the derailment of 17 cars of a westbound through **freight** on July 19, 1972 Carrier dispatched track gangs and a B&B gang to the scene. They worked continuously from 7:30 a.m. on July 19 to 6:00 a.m. on July 20, twenty two hours.

There were relieved and **instructed** to report at 11:30 a.m. on July 20, 1972. Their work was again stopped at 7:30 p.m. For this eight hour period (30 minutes out for lunch) they were paid four hours pro rata and four hours at the punitive **rate, ten** hours.

The usual starting time is 7:30 a.m. **Rule** 33 reads:

"STARTING TIME. The starting time of the work period for regularly assigned service will be designated by the Supervisory Officer and will not be changed without first giving **employes** affected thirty-six (36) hours' notice."

Carrier believes that **Rule** 33 does not apply here because, in its **view**, claimants were not in "regularly assigned **service.**" While it is true that the Board has given Carrier relief from the strict application of certain **rules** in cases involving derailment, the principle does not stretch to cover what occurred here. While the derailment certainly caused an **emerg-ency**, the claimants were performing their regularly assigned **service** within the **meaning** of **Rule** 33. The term "regularly assigned **service**" is used in that **Rule** to refer to **service** which has consistency and uniformity as to **on-duty** time, work days, rest days and possibly reporting point. Such "regularly

assigned service" is not altered by an emergency which causes the incumbents to work long hours. Carrier was required by the **Rule** to give thirty-six hours notice of a change in starting time.

Claimants have discussed other **Rules** which singly and in combination may have been violated by Carrier's decision on work and relief hours. It is **unnecessary** to treat with **them** because the clear violation of **Rule 33** means the claim must be sustained. The **long** hours which were necessary must have been a physical burden to claimants. **They** were also a monetary burden to Carrier by way of punitive **time**. The Rules call for the application of the punitive rate and the Board's function is to apply them as written. If they are too stringent, relief **must** be sought in the avenue provided by the **RLA**.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, **Illinois**, this 25th day of October 1974.

CARRIER MEMBERS' DISSENT TO AWARD NO. 20460 -
DOCKET NO. MW-20537 - (REFEREE EDGETT)

The record before us is clear and a derailment of **17 cars** occurred. An emergency existed. Carrier dispatched the track gangs and a B&B gang to the scene. Under no stretch of the imagination could this be considered "regularly assigned service".

Award No. **20460** is in error and we dissent.

H F M Braidwood

H. F. M. Braidwood

P. C. Carter

P. C. Carter

W. B. Jones

W. B. Jones

G. L. Naylor

G. L. Naylor

G. M. Youhn

G. M. Youhn