

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE COLORADO AND SOUTHERN RAILWAY COMPANY**

DISPUTE.—

"Claim for pay from 7:30 A. M. to 12:00 Noon, April 26, 1935, account B. & B. men Harry Crowley, Floyd Birkinbine, M. R. Johnson, E. M. Qually, John O'Connor, R. A. Nelson, and Evert Davey."

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

The carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The following statement of facts is jointly certified by the parties, and the Third Division so finds:

"On April 26, 1935, B. & B. Foreman A. W. Moore and his bridge gang, consisting of 7 men, of which men mentioned in claim were members, were stationed at Golden, Colo., being used in repairing bridge located at Golden with assigned hours from 7:30 A. M. to 4:00 P. M., with 30 minutes off for meal period. On this date this bridge gang were not permitted to start work until 12:30 P. M. and were only paid from 12:30 P. M. to 4:00 P. M.— 3 hours and 30 minutes. Men made claim for 4 hours and 30 minutes covering their assigned hours in the forenoon under the provisions of Rule 9, paragraph 'D', reading as follows:

'(d) 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 hours notice.'

There is in evidence an Agreement between the parties, bearing effective date of April 1st, 1925, and the petitioner cites and relies upon the following rules in support of claim:

"ARTICLE 2

"(a) Except as otherwise provided in these rules eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work.

"ARTICLE 8

"(a) Regularly established daily working hours will not be reduced below eight (8) and six (6) days per week to avoid making force reductions.

"ARTICLE 9

"(a) Where one shift is employed, the starting time shall be not earlier than 6:00 A. M. and not later than 8:00 A. M.

"(b) * * *

"(c) * * *

"(d) 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 hours' notice.

"ARTICLE 13

"Employees notified or called to perform work not continuous with the regular work period, will be allowed a minimum of three (3) hours for two hours' work or less and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.

"ARTICLE 15

"Employees required to report at usual starting time and place for the day's work, and when conditions prevent work being performed, shall be allowed a minimum of three (3) hours. If held on duty over three hours actual time so held shall be paid for."

The carrier represents that payment for the service was made under Article 8 (b), reading as follows:

"ARTICLE 8

"(b) Where less than eight (8) hours are worked for convenience of employes, or when regularly assigned for service of less than eight (8) hours on Sundays and holidays, or when due to inclement weather interruptions occur to regular established work periods preventing eight (8) hours' work, only actual hours worked or held on duty will be paid for except as provided in these rules."

The Third Division finds that Article 8 (b) is applicable and the question in dispute is one of opinion as to whether or not inclement weather prevented eight hours' work April 26, 1935. The evidence on this question is meager and conflicting and this Division, in the absence of definite knowledge as to weather and working conditions existing on April 26, 1935, is not in position to intelligently decide the question.

Therefore, case is remanded to the parties to make a joint review of the facts. If the joint review develops that weather conditions were not such as to justify the carrier in discontinuance of the work the claim should be allowed.

AWARD

Case is remanded for disposition in accordance with above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 10th day of November, 1936.