

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MERIDIAN & BIGBEE RIVER RAILWAY COMPANY

Mr. W. E. Hopkins, Trustee

STATEMENT OF CLAIM:

"(a) Under the provisions of Rule 2 of agreement effective February 1, 1937, are these Drawbridge Tenders entitled to four (4) hours overtime at the straight time rate on the basis of their monthly salary of \$60.00 per month as stipulated in Rule 20 of said agreement for each day worked?

"(b) Should Drawbridge Operators W. E. Nelson and B. S. Butts receive back pay to February 1, 1937, for services performed on the basis of Question (a)?"

EMPLOYEES' STATEMENT OF FACTS: "An agreement exists between the Meridian and Bigbee River Railway Company, Mr. W. E. Hopkins, Trustee, and employees represented by the Brotherhood of Maintenance of Way Employees, the effective date of the current agreement being February 1, 1937. Rule 2 which sets up the basic work day, reads as follows:

'Eight consecutive hours exclusive of the meal period shall constitute a days work, additional hours may be worked at additional straight time.'

"Rule 20 which provides the rates of pay in effect, reads as follows:

Section Foremen	\$100.00	per month
Tel. Lineman and Motor Car Maintainer..	100.00	" "
Draw Bridge Operator.....	60.00	" "
Ditcher Engineer55	" hour
Ditcher Firemen35	" "
Section Laborers18	" "

"Prior to February 1, 1937, the effective date of the current agreement, no agreement covering wages and working conditions applied on this railroad. At that time and prior thereto, W. E. Nelson and B. S. Butts, regularly assigned Drawbridge Operators at the Tombigbee River Drawbridge, were working twelve (12) hours per day separate tricks, so that an Operator would be on duty at this drawbridge each of the twenty-four (24) hours of the day. They received a monthly rate covering the assignment. Since the effective date of the agreement they have been required to continue on the same assignments as prior to the effective date of the agreement, regardless of the change in this respect, which Rule 2 was intended to bring about.

"Prior to the effective date of the current agreement, monthly rated section foremen were working ten (10) hours per day regular assignments, but immediately after the agreement became effective these section foremen were placed on an eight (8) hour per day assignment.

"During the high water season when it is necessary for the bridge to be drawn, they are advised by the barge before it reaches the bridge to draw the bridge which requires approximately twenty minutes, and are thereafter at liberty to do whatever they wish. It is the contention of the carrier, based on the information that has been obtained from persons familiar with the operation of the bridge and the duties performed by these employes, that even during the high water period they did not work as much as four consecutive hours a day.

"A copy of this submission is being at the time of the filing thereof presented to Mr. F. H. Fljoldal, President of the Brotherhood of Maintenance of Way Employes, with offices at 61 Putnam Avenue, Detroit, Michigan, and likewise a copy to Mr. M. C. Plunk, General Chairman of the Brotherhood of Railway Maintenance Employes with offices at Jackson, Tennessee.

"Attached hereto and made a part of this submission is an affidavit of the General Manager of the carrier with reference to the employment and duties of the employes involved, the same being made Exhibit B hereto, as also an affidavit of the Roadmaster of the carrier who is familiar with the contract between the employes and the carrier and the duties performed by the employes, the same being made Exhibit C hereto.

"In order to do full justice in this matter, the carrier is of the opinion that a hearing should be had at Meridian, Mississippi or at Naheola, Alabama, where the duly authorized representative of the National Railroad Adjustment Board could have before him witnesses familiar with the employment of Messrs. Nelson and Butts and the duties actually performed by them and the hours of work done by each.

"By reason of the facts above set out, it is the contention of the carrier and the Trustee that the complaining employes are not entitled to any additional compensation, and that the only compensation owing them is the amount heretofore paid under Rule 20 of the agreement of February 1, 1937."

OPINION OF BOARD: The evidence in this case discloses that the duties of the claimants are neither arduous, exacting nor confining. The carrier asserts that they have no designated hours of work, no designated hours for reporting for or remaining on duty. All of which might well have been urged, during negotiations of the agreement, as cogent reasons for setting these positions apart for special treatment with respect to the application of certain rules of the agreement such as Rules 2 and 20, quoted in Employes' Statement of Facts, and for the inclusion of other terms in the agreement continuing, so far as was appropriate, the conditions then obtaining. Whether the parties might have agreed on those matters is a subject with which this Board need not concern itself; if they had not, their differences would have been referable to another forum.

The employes state that prior to the effective date of the current agreement section foremen worked 10 hours per day; that when the agreement became effective they were assigned 8 hours daily. The carrier does not deny this statement but asserts that when these drawbridge operators were employed it was understood what their duties and wages would be, and that there has been no change in either. They were employed, however, when there was no working agreement with employes of their class and craft in effect; they are specifically included in the current agreement by Rule 20 listing rates of pay for each classification covered by the agreement.

The carrier asserts, in its rebuttal statement, that it operates but two trains daily over this bridge; Eastbound, passing over the bridge at 4:30 P. M. and returning Westbound passing over the bridge at 6:00 P. M.; that it has been the custom of the bridge operators, known to the carrier, to draw the bridge after the 6:00 P. M. passage and leave it drawn until the next afternoon. It would appear, therefore, that these operators could have been assigned to eight hours daily, exclusive of a meal period. While the carrier

says that they had no designated assignments, and were free to tend their gardens, adjacent to the bridge site, or otherwise occupy their time near at hand at their own discretion when not actually engaged in tending the bridge or the navigation signal lamps, it does not appear that they were ever instructed that their combined assignments were not expected to cover twenty-four hours daily.

The claim in this case is for four hours' overtime daily at pro rata rate for each of the claimants from February 1, 1937.

From the nature of the work upon which claimants are engaged it is apparent that they had ample opportunity to take an hour out of their assignments, whether eight or twelve hours, for meals. Rule 2 contemplates a meal period. The carrier would have complied with the terms of the agreement had it assigned these men to cover 9 or 12 hours daily with one hour out for meals. Upon the basis of a 12 hour tour of duty, with one hour out for meals, they are entitled to 3 hours' overtime at pro rata rate, daily.

There is evidence that both parties were under some misapprehension as to the understanding reached during negotiation of the agreement as to the status of these claimants. When that fact became apparent an adjudication of the dispute should have been sought with more promptitude. The Board does not undertake to place responsibility for the delay but the circumstances surrounding this case are such as to justify limiting retroactive payments to the period subsequent to April 1, 1938, the approximate date definite claim was presented to the carrier.

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 drawbridge tenders Nelson and Butts should be paid 3 hours' overtime at pro rata rate for each day worked on their respective assignments since April 1, 1938, so long as the assignments then in effect remain unchanged.

AWARD

Claim (a) and (b) sustained to the extent indicated in the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of January, 1939.