

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

Wilson McCarthy and Henry Swan, Trustees

STATEMENT OF CLAIM: "Claim of Section Foremen Vogel, Simmons, Jones, Anderson, and Graham, together with the laborers in their gangs who are assigned on the Salt Lake Division, for time and one-half rates of pay from 5:45 P. M., Sunday, March 6, 1938, to 5:45 P. M. Monday, March 7, 1938, in accordance with the provisions of Rule 40 current agreement."

JOINT STATEMENT OF FACTS: "Sunday, March 6, 1938, Section Foremen Vogel, Simmons, Jones, Anderson, and Graham, together with eleven section laborers were called at 5:45 P. M. to clear a wreck between Mile Posts 24 and 25 on the Marysville Branch, which was on a territory away from their home sections.

"These employes worked continuously at the wreck until 5:45 P. M., Monday, March 7, 1938, and claimed time and one half rate for all service performed clearing the wreck which was denied by the Management."

POSITION OF EMPLOYES: "Rule 40 of Agreement in effect between the Carrier and this Brotherhood reads:

'Rule 40. Except as otherwise provided in these rules, employes notified or called to perform work not continuous with the regular work period, will be allowed a minimum of three (3) hours for two (2) hours' work or less. If held on duty in excess of two (2) hours, time and one-half time will be allowed on the minute basis.'

"As indicated in the Joint Statement of Facts, section foremen listed therein and men in their gangs, were called at 5:45 P. M. Sunday, March 6th, 1938, for service in connection with clearing up a wreck between Mile Posts 24 and 25 on the Marysville Branch, and were continued in service under that call until they were released at 5:45 P. M., Monday, March 7, 1938. As will be noted in the Joint Statement of Facts, this service was rendered away from their respective headquarters and not in any way associated with their regular service in connection with the maintenance of their respective sections.

"These men were called for a specific service. They were held more than two (2) hours in connection with the particular service for which they were called. We therefore maintain that under the language and intent of Rule 40, quoted above, they are entitled to payment at the rate of time and one-half from the time they were called until they were released from the

service prompting the call. Award No. 365, rendered by this Honorable Board, sustains our position in this claim. We therefore maintain that the claim is justifiable and respectfully request that it be allowed."

POSITION OF CARRIER: "The employes involved in this claim are regularly assigned to our Thistle, Rio, Indianola, Provo and Fairview, Utah, sections on the Salt Lake Division with an eight hour tour of duty from 8:00 A. M. to 5:00 P. M.—one hour for lunch—six days per week.

"On Sunday afternoon, March 6, 1938, these men were called at about 5:45 P. M. or shortly thereafter to clear a wreck between Mile Posts 24 and 25 on our Marysville Branch. They were engaged in clearing this wreck from about 5:45 P. M. March 6th to 5:45 P. M. March 7, 1938, and were paid for their service as follows:

"March 6th—Time and one half rates from 5:45 P. M. to midnight.

"March 7th—Time and one half rate from midnight to 8:00 A. M. and pro rata rates from 8:00 A. M. to 5:45 P. M.

"For the services performed by these employes the organization presented claim for time and one half rates of pay from the time called until released or relieved, it being their contention that the provisions of Rule 40 current agreement which reads:

'Except as otherwise provided in these rules, employes notified or called to perform work not continuous with the regular work period, will be allowed a minimum of three (3) hours for two (2) hours' work or less. If held on duty in excess of two (2) hours, time and one-half time will be allowed on the minute basis.'

provides for such method of payment.

"These employes were paid under the provisions of Rule 41 which reads:

'Except as otherwise provided in these rules, employes will be allowed time and one half time on minute basis for service performed continuous with and in advance of regular work period.'

and in conformity therewith were allowed time and one half rates of pay from 5:45 P. M. March 6th to 8:00 A. M. March 7th, for work performed continuous with and in advance of their regular work period and pro rata rates of pay from 8:00 A. M. to 5:45 P. M. March 7th for work performed during their regular work period.

"The Carrier denies there is anything in Rule 40 which sustains the claim of the employes in this case. This rule simply provides for the minimum payment of three hours for two hours work or less when called to perform work not continuous with the regular work period, and if held on duty in excess of two hours time and one half time is to be allowed on the minute basis. There is nothing in the rule which provides that when employes are called outside their assigned hours and continue in service during all or part of their regular tour of duty they will be paid at time and one half rates from the time called until relieved from duty.

"The Carrier contends there is no justification for this claim either under the rules or the past application thereof."

OPINION OF BOARD: The claim, the joint submission and the contentions of the parties are hereinabove set forth in the summary of the docket. There is no dispute on the facts; the chief dispute is as to which rule applies. The employes contend that rule 40 governs; the carrier contends that rule 40 has no application and that the decision must be based on rule 41. Both cite Award Number 365. Having given careful consideration to the contentions, entire record and Award Number 365, this Division of the Adjust-

ment Board holds that rule 41 is controlling; that there has been no violation and that as the men appear to have been paid in accordance with the provisions of rule 41, the claim must be denied.

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 Carrier did not violate Rule 40.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of January, 1940.