

**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 Laborers Joe Welch and J. T. Flores, Helper, Utah, Section, for time and one half rates for service performed with snow plow from 12:01 A. M., Saturday, February 5, 1938, until released from such service in accordance with the provisions of Rule 40 current agreement."

JOINT STATEMENT OF FACTS: "At 12:01 A. M., Saturday, February 5, 1938, Section Laborers Joe Welch and J. T. Flores were called for service with snow plow and were used away from their home section.

"Mr. Welch was released from duty between the hours of 2:00 to 6:00 P. M., February 5, 1938, going off duty at 10:00 P. M. same date; Mr. Flores going off duty at 5:00 P. M. same date."

"Claim for time and one half rates for all service performed by these employees on February 5, 1938, 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, 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 (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 laborers Joe Welch and J. T. Flores were called for service on the snow plow (bull-dozer) at 12:01 A. M. Saturday, February 5th, 1938, and were continued in the service as follows: in the case of Joe Welch until 10:00 P. M., and J. T. Flores, until 5:00 P. M. that date. It appears that during this period Joe Welch was not actually working from 2:00 to 6:00 P. M. but was held to be in readiness for further service away from his headquarters. As will be noted in the Joint Statement of Facts, this service was rendered away from their headquarters and not in any way associated with the regular service in connection with their regular section work.

"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: "Section Laborers Joe Welch and J. T. Flores are regularly assigned to Section No. 347, Helper, Utah, 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.

"At 12:01 A. M. Saturday, February 5, 1938, these two employes were called for service with snow plow clearing track and sidings of snow and ice between Helper and Soldier Summit, Utah.

"Mr. Flores was in continuous service from 12:01 A. M. to 5:00 P. M., February 5th when he was relieved from duty. Mr. Welch was in continuous service from 12:01 A. M. to 2:00 P. M. when released, and from 6:00 P. M. to 10:00 P. M., February 5, 1938. For the service performed by these employes on February 5, 1938, 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 accordance therewith were allowed time and one half rates of pay from 12:01 A. M. to 8:00 A. M. for work performed continuous with and in advance of their regular work period and pro rata rates of pay 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 states or 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 Adjustment 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 employes involved in this dispute are respectively carrier and employes 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.