

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: "Claim of Employees' Committee:

"First: that the Carrier violated Rules 37 and 40-(a) of the current agreement by assigning certain employees classified as yard cleaners to seven hours, twenty minutes per day effective October 24, 1939.

"Second: that these employees shall be restored to full time assignment of eight hours per day."

EMPLOYEES' STATEMENT OF FACTS: "Rules 37 and 40 of Agreement in effect read:

'Rule 37. Eight (8) hours, exclusive of meal period, shall constitute a day except as otherwise provided in these rules.'

'Rule 40. (a) The regularly established daily working hours will not be reduced below eight (8) per day nor will the regularly established number of working days be reduced below six (6) per week to avoid making force reductions unless agreed to in writing by a majority of the employees affected through their General Chairman. Time lost due to inclement weather shall not be regarded as a violation of this rule.

(b) The observance of New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas will not be regarded as reducing the regularly established working hours or days.'

"Effective October 24th, 1939, instructions were issued to employees classified as yard cleaners, that their assignment was reduced to seven hours and twenty minutes per day."

POSITION OF EMPLOYEES: "Rules 37 and 40 quoted in Employees' Statement of Facts are very specific. Both provide that eight hours shall constitute a basic day.

"As stated in Statement of Facts, effective as of October 24th, 1939, the employees here involved were assigned to seven hours and twenty minutes per day. We maintain that in thus reducing the assignment of these employees the Carrier violated Rules 37 and 40 of the Agreement. We therefore hold that they shall be restored to full time eight hours' per day assignment in conformity with the claim, and we respectfully request that this Board so direct."

"Looking outside the purview of the schedule agreement herein concerned, we find many other schedule agreements containing provisions similar to those cited by the Committee. As a matter of fact, all agreements of which the Management has knowledge, contain similar provisions and generally the organizations advocate the establishment of shorter hours contingent upon payment of the agreed to rates. In evidence thereof, the Management directs attention to practice of years duration in many Departments of the Railroad Industry, which permits the discontinuance of activities in the interest of the Carriers on Saturday afternoons, and there are many other instances well known to this Board where time is paid for but is not worked.

"Insofar as Rule 40 (a) is concerned, it provides that reductions in hours or days will not be made to avoid force reduction without agreement between the parties. There is no hint of force reduction involved in this claim and the rule in its entirety is predicated upon that factor. Therefore, it is not applicable to the circumstances concerned in this claim.

"In summation of its case, the Management asserts, viz.,

1. Under the principles herein referred to, subsisting schedule provisions pertaining to rates of pay are not in conflict with and, therefore, supersede regulatory enactments designed to accomplish a specific purpose not at issue in the instant claim, and;
2. as this carrier has fully complied with its obligations under the terms of said schedule agreement, the instant claim is devoid of merit and should therefore be denied."

OPINION OF BOARD: This claim is based upon the fact that on October 24, 1939, the Carrier assigned certain employees, classified as yard cleaners, to seven hours and twenty minutes per day, and therefore violated Rules 37 and 40, which are as follows:

"Rule 37. Eight (8) hours, exclusive of meal period, shall constitute a day except as otherwise provided in these rules."

"Rule 40. (a) The regularly established daily working hours will not be reduced below eight (8) per day nor will the regularly established number of working days be reduced below six (6) per week to avoid making force reductions unless agreed to in writing by a majority of the employees affected through their General Chairman. Time lost due to inclement weather shall not be regarded as a violation of this rule.

"(b) The observance of New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas will not be regarded as reducing the regularly established working hours or days."

The claimant's request is that the eight (8) hour day be restored. There is no claim for pay. These employees were at all times paid a monthly salary according to the schedule. In other words, the salaries of the employees were not reduced when they were assigned to seven hours and twenty minutes.

Rule 40 (a) provides that: "* * * working hours will not be reduced below eight (8) * * * to avoid making force reductions * * *." No force reduction is involved in this claim, therefore, this rule is not applicable to the circumstances of this claim.

Rule 47, though not originally cited, was referred to by the employees in support of their claim. It is as follows:

"Rule 47. (a) To determine the hourly or daily rate of monthly men employed on working day basis, multiply the regular monthly

rate in effect by 12, divide by 306 (the number of regular assigned working days in the year) and divide this quotient by eight (8).

"(b) To determine the hourly or daily rate for positions held by monthly paid men employed on calendar day basis, multiply the regular monthly rate by twelve (12), divide by three hundred sixty-five (365) and divide this quotient by eight (8).

"(c) In converting monthly to hourly or daily rates, less than one-quarter cent will be dropped, one-quarter and less than three-quarters of a cent will be changed to one-half cent, and three-quarters of a cent or over will be increased to an even cent."

This is a rule of computation and has no bearing on the circumstances of this claim.

Rule 37 provides that eight (8) hours, exclusive of meal period, shall constitute a day.

This rule is identical with Rule 5 (a) in the claim in Docket MW-1228, Award No. 1228, except the word "consecutive" is omitted. The omission of the word "consecutive" before the word "hours" would not change the meaning of this in regard to the circumstances in dispute.

For the reason assigned in award in Docket MW-1228, Award No. 1228, the claim should 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 the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of November, 1940.