Award No. 1699
Docket No. MW-1772

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Employes' Committee:

First, that by paying Section Laborers Juan Hernandez, Jose Arredondo, Emilio Rodriquez and Juan Negrete of Grand Saline, Texas, at the pro rata rate of 36 cents per hour for overtime service performed, not continuous with the regular work period, the Carrier violated Section (a-7), Article IX of the current Agreement.

Second, that Section Laborers Hernandez, Arredondo, Rodriquez and Negrete shall be paid at time and one-half rate of 54 cents per hour for time worked from 8:00 P. M. to 12:00 midnight on April 8, 1941.

Third, that these Section Laborers shall receive the difference in pay between what they received at the pro rata rate for the specified overtime service and what they should have received at the time and one-half rate if Rule (a-7), Article IX, of the Agreement had been properly applied.

EMPLOYES' STATEMENT OF FACTS: On April 8, 1941, Section Laborers Juan Hernandez, Jose Arredondo, Emilio Rodriquez and Juan Negrete were called to work at 8:00 P. M. and worked until 12:00 midnight. For this service they received only the pro rata rate of pay, 36¢ per hour.

The current Agreement provides that employes called to perform work not continuous with the regular work period shall receive a minimum of three hours for two hours work or less, and if held on duty in excess of two hours, time and one-half pay for all time worked. The employes involved in this claim worked four hours.

The Agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employes is, by reference, made a part of this Statement of Facts.

POSITION OF EMPLOYES: Section (a-7), Article IX of the existing Agreement between the maintenance of way employes represented by the petitioning Brotherhood and the Texas and Pacific Railway Company provides as follows:

> "Section (a-7). Except as otherwise provided for in this Agreement, employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of three hours for two hours work or less, and if held on duty in excess of two hours, time and one-half time will be allowed for actual time worked."

OPINION OF BOARD: The four section laborers involved in this claim were called for service from 8:00 P. M. to 12:00 midnight April 8, 1941. For this service they were compensated at rate of 49¼¢ per hour. The Employes aver that claimants should have been compensated at rate of 54¢ per hour. Claim is presented under Article 9, Section (a-7) reading:

"CALL RULE: Except as otherwise provided for in this agreement, employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of three hours for two hours work or less, and if held on duty in excess of two hours, time and one-half time will be allowed for actual time worked."

Prior to August 1, 1937, the agreed or negotiated rate was 27¾¢ per hour.

Effective August 1, 1937, through negotiations and Mediation Agreement (A-395), the rate was increased to 32¾¢ per hour.

During the period covered by the claim (April 1941), Section 6 of the Fair Labor Standards Act provided that every employe be paid not less than 36¢ per hour for time worked.

The question is whether the time and one-half rate for overtime under the contract shall be computed on the 36¢ minimum provided in the Fair Labor Standards Act or computed on the contract rate (32¾¢ per hour) established by the parties effective August 1, 1937.

The position of the Employes is that the rate of 36¢ per hour is the basic rate; that when the order of the Fair Labor Standards Act became effective any employe who was receiving less than 36¢ per hour for wages was automatically raised to 36¢ per hour, thereby amending the agreement which became effective August 1, 1937; and that pay for time and one-half should be based on the rate of 36¢ per hour, or 54¢ per hour.

It is the position of the Carrier that the payment of 36¢ per hour for all time worked satisfied the requirements of Section 6 of the Fair Labor Standards Act and was not contrary to or in violation of the agreement effective November 16, 1937.

The employes are carried on the payroll at the agreed to schedule rate of pay and if this schedule rate of pay does not produce 36¢ per hour for each hour worked as provided for by the Fair Labor Standards Act, an item of adjustment is then shown on the payroll increasing the allowance to not less than that required by the Fair Labor Standards Act.

For instance, on April 8 the claimants were paid 8 hours at the agreed to rate of 32¾¢ per hour, amounting to $2.62; 4 hours at time and one-half, 49¼¢ per hour, amounting to $1.97, or total of 12 hours, $4.59, which amounts to more at schedule rates than would 12 hours at 36¢ per hour, which would only be $4.32; therefore, the employe on this date being paid under schedule rates in excess of that as required by the Fair Labor Standards Act, no adjustment would be necessary under that Act.

This division cannot agree with the claim of the Carrier that the Federal Act did not affect the contract wage of 32¾¢ per hour. In our opinion the Federal Act modified the agreement effective August 1, 1937 for persons who prior to that date were receiving a wage of less than 36¢ per hour.

The employe is entitled to a wage of 36¢ per hour for each hour of the 8 hours he worked on April 8, 1941 and time and one-half for overtime worked on that day. To hold with the view of the Carrier would deprive the laborers of the basic rate of 36¢ per hour for the first 8 hours worked upon that day. Such action on our part would violate the intent and purposes of the Act.

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 proper rate of pay for the laborers on April 8, 1941 was 54¢ per hour for each hour of overtime worked on said day and said laborers are entitled to recover their wage loss.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1942.