Award No. 1768
Docket No. MW-1768

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of Employes' Committee:

First, that by placing Mike Linden, Arnold Card and William Stobbs, Crossing Flagmen, Eau Claire, Wisconsin, on seven (7) hours per day assignment and paying them on the basis of such assignment, effective as of March 1, 1941, the Carrier violated Rules 32 and 44 of the current Agreement.

Second, that these employes shall be placed on full time eight (8) hours per day assignment and paid the appropriate rate applicable, 36 cents per hour.

Third, that these employes shall be paid the difference between what they have received on the basis of $78.17 per month and the appropriate rate applicable, 36 cents per hour, retroactive to March 1, 1941.

EMPLOYES' STATEMENT OF FACTS: Prior to March 1, 1941, Mike Linden, Arnold Card and William Stobbs, Crossing Flagmen, Eau Claire, Wisconsin, were regularly assigned and worked full time—eight (8) hours per day.

Effective as of March 1, 1941, these employes were placed on a seven (7) hour per day assignment.

POSITION OF EMPLOYES: Rule 32 of the existing agreement between the Chicago, St. Paul, Minneapolis and Omaha Railway Company and its maintenance of way employes represented by the petitioning Brotherhood, reads as follows:

> "Rule 32—A Day's Work: Eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

The language of this rule is definite and positive. It should be subject to no misunderstanding. It makes clear provision for an eight-hour day as the minimum time to be paid for in the case of an employe who is in service for any length of time during a work day. If further clarification of this point is required, however, it is supplied by Rule 44 of this same agreement, which reads as follows:

> "Rule 44—Non-Continuous Manual Labor: Positions not requiring continuous manual labor, such as track, bridge and highway crossing watchmen, engine watchmen, flagmen at railway non-interlocked crossings, lampmen and pumpers, will be paid a monthly rate

not previously agreed upon by both parties—being contrary to that part of Rule 44 providing for a monthly rate for the class of employes herein involved.

As to the third paragraph of the Petitioner's claim requesting the payment of a rate of 36 cents per hour: This is in itself a repetition and has above been answered by the Carrier. The acknowledgment of the payment on the basis of $78.17 per month fully supports and proves that portion of the Carrier's Statement of Facts.

Since the inception of the Fair Labor Standards Act, this Carrier has adopted the definite policy of making wage payments: first—under the provisions of the applicable agreements, then such upward adjustments as are required to meet the provisions of the Federal Act.

This Carrier emphatically denies violation of any agreement rules and insists the employes involved herein were correctly compensated.

Carrier respectfully calls your Board's attention to Award No. 1228, Docket No. MW-1228, and Award No. 1229, Docket No. MW-1302, involving similar disputes.

Carrier contends the evidence applying to the facts does not warrant an affirmative Award.

OPINION OF BOARD: This docket involves a construction of Rule 44 of the current Agreement, which is as follows, so far as material:

> "Positions not requiring continuous manual labor, such as * * * highway crossing watchmen, * * * will be paid a monthly rate to cover all services rendered. If present assigned hours are increased or decreased the monthly rate shall be adjusted pro rata as the hours of service in the new assignment bear to the hours of service in the present assignment, except that hours above twelve (12), either in new or present assignments, should be counted as one and one-half (1½) in making adjustments. Nothing herein shall be construed to permit the reduction of hours for the employes covered by this rule below eight (8) hours per day for six (6) days per week. * * *"

The facts disclose that claimants were highway crossing watchmen and assigned to work eight hours per day for seven days a week and paid a stipulated monthly wage. Commencing in March, 1941 the Carrier reduced the assignments to seven hours per day, seven days a week, but made no reduction in the monthly wage. The claimants contend that under the express provisions of Rule 44 the Carrier was obligated to work them eight hours each day during six days each week, and that the Carrier could not reduce the number of working days below six in any one week. Claimants rely upon that portion of the rule which provides: "Nothing herein shall be construed to permit the reduction of hours for the employes covered by this rule below eight (8) hours per day for six (6) days per week." The Carrier contends in substance that this rule only requires that the employes be worked the equivalent of eight hours per day for six days per week, or a total of forty-eight hours per week.

It is obvious that this dispute was precipitated by the enactment of the "Fair Labor Standards Act." By working these employes eight hours per day for seven days a week the agreed monthly wage would not meet the minimum requirements for the hourly wage established under the provisions of that act. Instead of increasing the monthly rate so as to meet the minimum requirements for the hourly wage, the Carrier reduced the number of monthly working hours to a point where the old monthly rate would meet the requirements of the hourly rate provided under the terms of the Act. We think it clear that "this Board has no concern regarding the compliance with or violation of that Act." This Board's function and jurisdiction is to interpret the contract between these claimants and the carrier independent

of the Fair Labor Standards Act. Award 1228. What rights or obligations the parties to this dispute have under the terms of that Act are of no concern to this Board, and this Award will only attempt to construe the agreement between the parties.

The Carrier relies upon Award 1228, but the rule there involved was vastly different from the rule with which we are here concerned. The only rule construed in that award was the rule which provided: "Eight (8) consecutive hours * * * shall constitute a day's work." It was held under such rule that the Carrier was not obligated to work the employes eight hours each day. But the rule with which we are here concerned says: "Nothing herein shall be construed to permit the reduction of hours for the employes covered by this rule below eight (8) hours per day for six (6) days per week." This is a specific rule to cover the type of labor being performed by claimants, and a rule in addition to the general rule such as was involved in Award 1228. The language of the rule is clear. If, as contended by the carrier, the rule only required that employes covered thereby be worked an equivalent of eight hours per day for six days per week it would have been a simple matter to so provide. But the rule says there will be no reduction in hours below eight hours per day, for six days per week. That language is clear. The violation of the rule here asserted relates to the reduction in daily hours below eight, and we are of the opinion that under the clear terms of the rule there was a violation when the Carrier reduced the daily hours below eight, on six of the seven days that it required claimants to work. We interpret rule 44 to mean that claimants are entitled to work eight hours each day for six days a week, if they work seven days a week the rule does not require that they work eight hours all of the seven, one day of the seven is not covered by the rule.

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 there was a violation of the agreement when the Carrier reduced the daily hours of claimants below eight on six of the seven days that it required claimants to work. That this Board has no jurisdiction to enforce the minimum wage requirements established under the Fair Labor Standards Act. That act provides the method for its enforcement.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1942.