

Award No. 1769

Docket No. MW-1769

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC LINES**

STATEMENT OF CLAIM: Claim of Employees' Committee:

First, that by assigning I. J. King, Crossing Watchman, Martin Street, San Antonio, Texas, to six (6) hours and forty (40) minutes per day; Geronimo Verastigo and Francisco Llano, Crossing Watchmen, Laredo, Texas, to six (6) hours and thirty (30) minutes per day; and Bill Frederick and J. T. Jones, Crossing Watchmen, Kilgore, Texas, to six (6) hours per day, and paying them on the basis of such assignment, the Carrier violated Rules 14 (a) and 16 (a) of the current Agreement.

Second, that these Crossing Watchmen shall be restored to full time (eight hours per day) assignment and paid the appropriate rate applicable, 36 cents per hour.

Third, that these Crossing Watchmen shall be paid the difference between what they have received and that which they should have received on the basis of paragraph 2 of this Statement of Claim, retroactive to March 1, 1941.

EMPLOYEES' STATEMENT OF FACTS: Prior to March 1, 1941, Crossing Watchmen I. J. King, San Antonio, Texas; Geronimo Verastigo and Francisco Llano, Laredo, Texas; and Bill Frederick and J. T. Jones, Kilgore, Texas, were regularly assigned to eight (8) hours per day, 365 days per year.

Effective as of March 1, 1941, I. J. King, San Antonio, Texas, was assigned to six (6) hours and forty (40) minutes per day, Geronimo Verastigo and Francisco Llano, Laredo, Texas, to six (6) hours and thirty (30) minutes per day, Bill Frederick and J. T. Jones, Kilgore, Texas, to six (6) hours per day.

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

POSITION OF EMPLOYEES: Rule 14 (a) of the existing Agreement between the Missouri Pacific Lines and its Maintenance of Way Employees represented by the petitioning Brotherhood, reads as follows:

"Rule 14 (a). Except as otherwise provided in these rules, eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

The Carrier contends that there has been no violation of the Agreement, that the employes making the claim in this case have been paid for all services performed the amount due them under the Agreement between the Organization and the Carrier and that the claim in its entirety is without merit and should be denied.

OPINION OF BOARD: This docket involves a consideration of Rule 16 (a) of the current agreement which so far as material is as follows: "Positions not requiring continuous manual labor, such as * * * highway crossing watchmen, * * * will be paid a monthly rate to cover all service rendered. * * * If 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. The hours of employes covered by this rule shall not be reduced 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 assignment below eight hours per day seven days a week, but made no reduction in the monthly wage. The claimants contend that under the expressed provisions of Rule 16 (a) the Carrier was obligated to work them eight hours each day during six days each week. The claimants rely upon that portion of the rule which provides: "The hours of employes covered by this rule shall not be reduced 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 wages 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 this claimant 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: "The hours of employes covered by this rule shall not be reduced 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 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 as 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 16 (a) 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 days. 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 a 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.