

Award No. 2172

Docket No. MW-2191

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Augustine Medina, Trackman, be paid on the basis of time and one-half for hours worked outside of his regular assignment from January 4, 1941 to January 21, inclusive, 1941.

EMPLOYEES' STATEMENT OF FACTS: On January 2, 1941 Augustine Medina was regularly assigned as a trackman. His regular assigned working hours were from 8:00 A. M. to 5:00 P. M. daily except Sundays. On January 2 at 7:00 P. M. Medina was arbitrarily required by the Carrier to work from 7:00 P. M. to 7:00 A. M. and he was continued on such assignment until 7:00 A. M. January 21.

On January 2, 3 and 4 Medina received time and one-half for each hour worked from 7:00 P. M. to 7:00 A. M. Beginning with January 5 the Carrier changed his rate to pro rata rate for the first ten hours and time and a half for the eleventh and twelfth hours and continued to pay Medina on this basis for the remainder of the period that he was temporarily used as a track watchman incident to a slide located on the section on which he was employed. On January 22, Medina was returned to his regular assignment working from 8:00 A. M. to 5:00 P. M.

POSITION OF EMPLOYES: It will be observed from Employees' Exhibit "A" that the Carrier is contending that a verbal understanding was reached between the Carrier and Mr. A. Shoemake, who was then General Chairman. However, the Carrier and Mr. Shoemake are not in accord regarding any understanding reached during negotiations.

In order that your Board may have full information as to what the understanding at the negotiations was, we offer as Employees' Exhibit "B" Mr. Shoemake's letter addressed to Mr. C. P. King under date of August 2, 1941. Exhibit "B" contains evidence that no understanding, either verbally or otherwise, was reached granting the Carrier the right to disregard the provision of Article V, Rule 36.

The Employees contend that the Carrier violated Rule 36 in arbitrarily assigning Medina from his daily assignment to night work and paying him at the straight time rate for work performed outside of his regular assignment for the dates involved in this claim.

Medina was regularly assigned as a section man at Irving, Texas, his tour of duty was 8:00 A. M. to 12:00 noon, 1:00 P. M. to 5:00 P. M. On January 2, 1941, Medina was assigned to hours 7:00 P. M. to 7:00 A. M. The reason for the assignment was that the conditions existing called for the services of an experienced trackman. Therefore, the duties performed by Medina could not be considered those of a track watchman.

OPINION OF BOARD: Claimant was regularly assigned as a section man with tour of duty 8:00 A. M. to 12:00 noon and 1:00 P. M. to 5:00 P. M. On January 2, 1941 he was assigned to duty as track watchman with tour of duty from 7:00 P. M. to 7:00 A. M., and continued on that job until 7:00 A. M. January 21, 1941. The Employees contend that claimant was entitled to be paid on basis of time and one-half for all hours worked from January 2nd to January 21st. In support of their contention Employees cite Rules 7, 19 and 36, Article V. Rules 7, 19 and 36 of Article V read as follows:

"Rule 7. Except as otherwise provided in these rules, the ninth and tenth hours when worked continuous with regular work period shall be paid for at pro rata hourly rate; beyond the tenth hour shall be paid for at rate of time and one-half time on the minute basis."

"Rule 19. The starting time of work period for regular assigned service shall be designated by the supervisory officer, and will not be changed without first giving the employees affected thirty-six (36) hours' notice."

"Rule 36. Employees working under regular assignment shall not have their assignments changed to avoid the application of overtime rules."

The real question in the case is whether the carrier changed claimant's assignment "to avoid the application of overtime rules." Clearly, we think, it did not. Claimant was simply separated from his usual assignment of section laborer to the temporary position of watchman. The carrier failed to give claimant 36 hours' notice of the change of assignment as required by Rule 19. But it satisfied the requirements of the rule by paying him at the rate of time and one-half for the first 36 hours on the new assignment. Thereafter it paid him in accordance with the requirements of Rule 7.

We think the record demonstrates that the carrier meticulously complied with all applicable provisions of the controlling agreement.

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 there was no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1943.