Award No. 2508
Docket No. SG-2560

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim that Messrs. J. M. Durnell, Wayne Drushell, F. E. Reish, Glen Reynolds, and G. J. Giet be paid the difference between the straight rate which was allowed for hours of their regular assignment, including one-half time which was allowed for travel time outside regular assigned hours on regular work days, and time and one-half rate they should have been paid for all services performed on off-duty day, March 31, 1941.

EMPLOYES' STATEMENT OF FACTS: Messrs. Durnell, Drushell, Reish, Reynolds, and Giet, signal department employes, Kent Division, were directed to and did attend a safety meeting at Kent, Ohio, on Monday, March 31, 1941.

Following the establishment of a five-day work week, Monday was assigned as the off-duty day for these employes.

For services performed Monday, March 31, 1941, Messrs. Durnell, Drushell, Reish, Reynolds and Giet were allowed straight time rate of pay for the regular hours of their assignment on regular work days and were also allowed one-half rate for travel time outside such hours.

There is an agreement effective November 1, 1935 between the parties to this dispute. Rule 13 of that agreement was not amended nor revised when the five-day week was established.

POSITION OF EMPLOYES: It is the position of the Brotherhood that when a five-day week was established (see Brotherhood's Exhibit No. 1) in place of a six-day week, an additional rest day was thereby created, thus eliminating any and all regular work hours for the twenty-four hours of such additional rest day. We hold that on this off-duty day, which was regularly assigned, the employes were free from any obligation to the carrier and if called or directed to perform service on said off-duty day are entitled to compensation as provided in Rule 13 as such service was outside of assigned working hours.

For the convenience of this Division, Rules 11, 12 and 13 are quoted here:

"Rule 11. Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by Proclamation shall be con-

3. These safety conferences are customarily held on all divisions of this railroad. Employes losing time or who are used on their off-duty day as a result of attending such conferences and claim pay are compensated therefor on the same basis as they would have been paid if they had worked on their regular assignment, or would be paid 8 hours at straight time rate if attending the conference on an off-duty day. March 31, 1941, the date on which this conference was held, was the off-duty day for the claimants involved and their proper compensation should have been 8 hours straight time rate, which was the original claim by both Reynolds and Giet, and they were so paid.

4. The safety conference was held in Kent, Ohio, at the Hotel Kent, and the railroad arranged for the conference room and provided meals for the 107 guests who attended the conference and paid all expenses.

5. These safety conferences provide a means for the railroad and employes to discuss the safety rules and safety procedure to be followed during the current working season. The employes are afforded an opportunity to raise questions and make recommendations concerning safety matters, and it would appear that these safety conferences must be considered "mutual" conferences for the purpose of establishing a protection for workers, and that the railroad should not be unjustly penalized by technical interpretations of rules which were not intended.

6. The case now before the Third Division is similar to Docket SG-1887, Award Number 1851 (which concerned the same safety conference, March 31, 1941), except that in Award No. 1851 claim was made for employes attending on their regular work days, whereas in this claim the employes involved attended the safety conference on their off-duty day. Award No. 1851 denied the claim under the provisions of Rule 12, and this instant claim should also be denied under the provisions of Rule 12 and hold that they were properly paid under the provisions of Rule 22, all in accord with customary practice.

OPINION OF BOARD: The facts here are not in dispute. A five-day week had been established in place of a six-day week. These employes attended a safety meeting on one of their off-duty days. There is no question that they would be entitled to pay at the rate of time and a half for such attendance if their presence there could be called "work" or "service" as those words are used in Rules 11, 12 and 13. These rules read as follows:

"Sunday and Specified Holiday Work

Rule 11. Work performed on Sundays and the following legal holidays—namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by Proclamation shall be considered the holiday) shall be paid at the rate of time and one-half, except that employes necessary to the continuous operation of the carrier and who are regularly assigned to such service, will be assigned one regular day off duty in seven, Sunday if possible, and if required to work on such regularly assigned seventh day off duty will be paid at the rate of time and one-half time; when such assigned day off duty is not Sunday, work on Sunday will be paid for at straight time rate.

"Overtime

Rule 12. The hourly rates named herein are for an eight (8) hour day. All service performed outside of the regularly established working period shall be paid for as follows:

Overtime hours either prior to or continuous with regular working period shall be computed on the actual minute basis and paid for at the rate of time and one-half.

Employes will not be required to work more than ten (10) hours without being permitted to take a second meal period. Such second meal period will be paid for and shall not be in excess of thirty (30) minutes.

"Pay for Calls

Rule 13. Employes released from duty and notified or called to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of two hours at the overtime rate; if held longer than two hours they will be paid at the overtime rate computed on the actual minute basis. The time of employes so notified will begin at the time required to report and end when released. The time of employes so called will start when they report and end at the time they return to designated point at home station."

We concede that the words "work" and "service" as used in the rules are synonymous.

The employes contend that this was not a safety conference but rather a conference to discuss rules. We do not see that this distinction makes any difference in the application of the agreement. Their expenses were taken care of and they were paid on somewhat different bases as to time and rate but not time and a half which is required under the rules for those who on their off-duty days perform work or service for the Carrier. In their claim they ask the difference between what they would have received at the time and a half rate and what they were paid. The Carrier claims to have paid them as it would have paid employes called for special service under the provisions of Rule 22, but Rule 22 does not apply to the service which they rendered and the Carrier does not contend that it does.

The awards of this Division are in conflict on the question whether attendance of an employe at an investigation or at a meeting such as in the present case constitutes "work" as that word is used in the rules here involved. Awards 1545 and 2032 hold that it does. Award 588 holds that it does if the attendance is in the interest of the Carrier; but that the rule might be otherwise if it is in the interest of the employe or in the mutual interest of the employe and the Carrier. Award 588 seems to have been influenced by the particular hardship imposed on the employe. This consideration may have been well enough in so far as that particular case was concerned. But we are concerned with the meaning of the rule and that meaning remains the same whether its application to varying states of facts results in hardship or otherwise. The majority of awards hold that the rules of an agreement relating to work do not cover the performance of such special services as time spent for examinations, attending court or investigations, and meetings and conferences would be in the same class. Awards 134, 409, 487, 605, 773, 1032, 1816, 2132.

It would perhaps be advisable to provide by rule specifically for payment for all these special services. We do not feel that it is advisable for this Board to attempt to do so by reading into the rules something that is not there. We see no reason for not following the interpretation put on the Work Rules in the latter group of awards above mentioned.

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 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 10th day of March, 1944.