Award No. 2513
Docket No. MW-2514

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

WHEELING AND LAKE ERIE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood—

(a) That the Carrier violated the provision of Rule 5 (a-8) in paying pro rata rate to B. & B. Gang; namely, George M. Shirley, Jos. H. Radsick, Chas. Ames, Geo. Hartford, Chas. H. Jeremy, Harvey Siefke and Zander A. Schmidt, from 7:30 A. M. November 9 to 4:30 P. M. November 9, 1942; and

(b) That the above employes receive the difference between what they were paid at pro rata rate and what they were entitled to receive under the provision of Rule 5 (a-8) at the time and one-half rate until released from emergency work.

EMPLOYES' STATEMENT OF FACTS: The employes mentioned in the claim in this dispute were called by the Carrier at 9:00 P. M., Sunday, November 8, 1942. The call was made by the Carrier as a result of a wreck at Fremont, Ohio, on Sunday, November 8. The employes were in continuous service from 9:00 P. M., Sunday, November 8, until 6:00 P. M., Monday, November 9. Twenty minutes in which to eat was allowed the employes and the meal periods were paid for as continuous service.

These employes were called to report at Toledo, Ohio, and were not released from their call until returned to Toledo. They were paid the straight time rate for their regular hours on Monday, November 9. Regular assigned hours for these employes were from 7:30 A. M. to 4:30 P. M., exclusive of the meal period.

There is an agreement in effect between the parties, effective November 10, 1934, which is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: It is the Employes' position that the Carrier violated the provision of Rule 5 (a-8) which reads as follows:

> "Employes notified or called to perform work not continuous with the regular work period, will be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half time will be allowed on the minute basis until released."

The above rule definitely provides that when employes are called to perform service outside of their regular assigned hours "* * * if held on duty in excess of two (2) hours, time and one-half time will be allowed on the minute basis until released."

payment of time and one-half time for the regular work period in any case except when employes are required to return for emergency service during the remainder of their regular work period after being released—Rule 5 (i). By the agreement the parties clearly intended that in all other cases the regular work period should be paid for at straight time rates. It is, therefore, clear that the payment made in the instant case was strictly in conformity with the provisions of the agreement.

In discussing this case with the committee the carrier pointed out that its position is supported by the Board's Award 1016, which covered a claim almost identical with the one here involved, and that the carrier could see no justification for the submission of this claim. The carrier therefore declined the committee's request for joint submission.

CONCLUSION

The claimants have been compensated at straight time rates for the time worked during the regular work period—7:30 A. M. to 4:30 P. M.—on Monday, November 9, 1942. This is strictly in accordance with the agreement. The claims should, therefore, be declined.

OPINION OF BOARD: Claimants comprise a B. & B. gang. Their regular tour of duty is from 7:30 A. M. to 4:30 P. M. On Sunday, November 8, 1942, they were called for duty at 9:00 P. M. to clear a wreck at Fremont, Ohio. They started from Toledo and returned there at 6:00 P. M. Monday, November 9th. Travelling and working they were, all told, on duty continuously for twenty and one-half hours. For time consumed in travelling they were paid straight time. For hours worked before and after their regular tour of duty (7:30 A. M. to 4:30 P. M., November 9th) they were paid at the rate of time and one-half. For their regular tour of duty—7:30 A. M. to 4:30 P. M., November 9th—they were paid straight time. They claim they are entitled to time and one-half time for working their regular assignment.

The claim is based on the Call Rule, Section (a-8) of Rule 5 of the current agreement; and on the decision of this Board in Award 365, which turned upon an interpretation of the Call Rule in the agreement there involved.

Rule 5 (a-8) provides:

> "Employes notified or called to perform work **not continuous** with the regular work period, will be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half time will be allowed on the minute basis until released." (Emphasis added.)

Standing alone we do not think this rule brings the instant claim within the letter or spirit of the decision in Award 365. For, the rule there involved did not contain the limiting words **"not continuous"** which we find in Section (a-8). The difference may be emphasized by the following quotation from the opinion in Award No. 365:

> "The call rule is stated in mandatory terms **without reservation** . . ." (Emphasis added.)

But Section (a-8) of Rule 5 does not stand alone. Section (a-7) of the same rule provides:

> "Time worked or held on duty **beyond the completion of the regular eight (8) hour assignment** . . . shall be paid for at rate of time and one-half time on the minute basis." (Emphasis added.)

And again, Section (a-9) of Rule 5 provides:

> "Except as otherwise provided in these rules, employes will be allowed time and one-half time on the minute basis for service performed **continuous with and in advance of** regular work period." (Emphasis added.)

These sections—a-7 and a-9—would be rendered meaningless if it were held that claimants are entitled to time and one-half time for work performed on their regular assignment. Similar rules, it is true, were considered in Award No. 365. But, after stressing certain phrases such as "Except as otherwise provided in these rules," the opinion states:

> "It is neither necessary nor intended in this opinion to indicate, as a general matter of principle, just when the one or the other of these two rules of the agreement should govern the payment of overtime where the service rendered turns out to be continuous with the regular work-day period; it is merely held that under the circumstances of this case, involving the performance by crews from various localities of a single emergency service which was started 16 hours before the beginning of the regular work-day period and continued without interruption for a period of 26 hours, the call rule, interpreted in conformity with its express terms, appropriately governs the payment of overtime."

Obviously it was not intended that the decision be considered as a binding precedent in all cases in which the issue is presented. Certainly it is not authority in a situation such as this: where the work performed before and after the regular assignment was continuous with it; and where the call rule contains the reservation: "not continuous." See Awards: Nos. 1016 and 2461.

We conclude that claimants were paid in accordance with the terms of the 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 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 no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1944.