Award No. 2589
Docket No. CL-2447

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the carrier has violated and continues to violate the Clerks' Agreement:

(a) When it required and continues to require hourly rated freight platform employes at San Luis Obispo Freight Station to regularly report at an assigned starting time and then releases such employes before they have performed eight (8) hours' service, and fails and refuses to pay such employes a minimum of eight (8) hours per day.

(b) That all employes so required to regularly report for work at San Luis Obispo Freight Station and released prior to performance of eight (8) hours' service, shall be reimbursed for the difference between what they earned and what they would have earned had they been permitted to work full eight (8) hours.

(c) That adjustment claimed in Item (b) above shall be retroactive to November 22, 1941, in consonance with advice given by Division Chairman Reynolds in his letter of November 12, 1941, in which claim and protest was filed with Division Superintendent.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of October 1, 1940, as to rules and working conditions, is in effect between the parties to this dispute. The employes involved in this claim are covered by that agreement.

Prior and subsequent to the date claim was presented to Division Superintendent by Division Chairman, i. e., November 12, 1941, approximately eight (8) employes have been regularly required to report daily at San Luis Obispo, Calif. for duty as Truckers, commencing 2:00 A. M., 2:15 A. M. and 3:00 A. M. and were released from service prior to expiration of eight (8) hours, being compensated only for actual service performed. This condition continued in effect from November 12, 1941, and remains in effect, in more or less degree, dependent upon train arrivals, and volume of business to be handled.

POSITION OF EMPLOYES: There is contained in our current agreement with the carrier, Rule 9, which reads:

Day's Work

Rule 9.

Except as otherwise provided in this article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work.

The Division will note that the above-quoted proposed rule is definitely a guarantee rule, and is in no way similar to Rule 9 as it appears in the current agreement and as it appeared in the agreement effective February 1, 1922. By requesting the above-quoted proposed rule the petitioner was in effect attempting to have the carrier agree to a guarantee rule. If the petitioner's position at that time was that Rule 9 as it appeared in the agreement effective February 1, 1922 was a guarantee rule, there would have been no necessity for requesting a change in such rule.

The foregoing establishes that the petitioner admitted or conceded that Rule 9 as it appeared in the agreement effective February 1, 1922 was not a guarantee rule and the carrier not having agreed to the proposed guarantee rule and said Rule 9, as it appeared in the February 1, 1922 agreement, again being agreed to in the agreement effective October 1, 1940 (the current agreement) establishes the fact that the petitioner agreed that Rule 9 of the current agreement is not a guarantee rule.

The carrier submits that it was not the intention of the parties that Rule 9 of the current agreement be construed as or interpreted as a guarantee rule. The language of the rule clearly not providing for a guarantee and it being the intention of the parties not to provide for a guarantee rule, such facts are controlling in the instant case, and precludes the Division from holding that Rule 9 in any way guarantees to employes who work less than eight hours per day eight hours' pay for such time worked.

The carrier submits that the foregoing conclusively establishes that the claim in this docket is without merit and should be denied.

OPINION OF BOARD: The facts in this case are not in dispute. There are some eight platform employes at the San Luis Obispo Freight Station who are required to report daily at definitely assigned starting times. They are paid on an hourly basis for actual time worked. The claim is for eight hours pay for all employes so assigned. The claim is based on Rule 9, which provides:

"Days Work"

> "Except as otherwise provided in this article, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work."

The carrier contends that the rule does not guarantee a minimum of eight hours work. The contention is untenable in the face of many decisions of this Board holding that rules, identical in terms, guarantee a minimum of eight hours work to employes who are required to report daily at definitely assigned hours to perform work which arises in the usual course of each day's business. See Awards Nos. 330, 340, 438, 516, 1047, 1127, 1211, 1803. In the Award last cited there is a comprehensive discussion of previous awards, holding that such rules as Rule 9 guarantee a minimum of eight hours work, and the reasons justifying such interpretation of the rule. The interpretation of the rule as laid down in these awards has, we think, effectively become a part of it in all agreements, between the Brotherhood and the carriers, in which it appears.

The fact that the organization, in 1940 proposed an amendment to Rule 9, providing for an express guarantee of eight hours work, does not diminish the force and effect of the interpretation of the rule as it stands. Nor does such proposal estop claimants from claiming the guarantee of a minimum of eight hours work under the interpretation placed upon it by the decisions of this Board. The proposal was merely designed to put such interpretation into the rule in express terms.

Again, the carrier charges the organization with bad faith in pressing the claim. This charge is predicated upon facts showing that the situation of the platform employes at San Luis Obispo has been the subject of controversy

since 1937. Claims were presented to the carrier and settlements were made between its representatives and the Division Chairman. These settlements, or agreements, are effective only insofar as they have been acted upon. See Award No. 2576. They do not serve to modify the controlling agreement entered into by the Brotherhood and the carrier. Nor do they estop the employes from claiming the rights accorded them by that agreement. Aside from this, however, we think the charge of bad faith is not well-founded. The last previous dispute was settled in March 1941 with a specific reservation by the Division Chairman that it was made "with the understanding that this arrangement can be cancelled upon ten days' notice."

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 violated the agreement.

AWARD

The claim is sustained as to all employes who have been required to report daily at definite starting times since November 22, 1941.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1944.