

Award No. 2714
Docket No. MW-2722

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, 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:

1. That the Carrier violated the provisions of the Agreement in effect in paying B. & B. Foreman Seth Duncan and members of his gang at pro rata rate for work performed in advance of the regular work period from June 13th to July 10, 1943;

2. That Seth Duncan and members of his gang be paid the difference between what they received at pro rata rate and that which they were entitled to receive at time and one-half rate from 12:00 o'clock midnight to 8:00 A. M. for each day thus temporarily engaged from June 13th to July 10, 1943.

EMPLOYEES' STATEMENT OF FACTS: The B. & B. gang in charge of Seth Duncan, known as Gang No. 5, is a regular Western Division gang. Their assigned hours on their home Division prior to June 11, 1943 were 8:00 A. M. to 12:00 noon, and 1:00 P. M. to 5:00 P. M.

On June 11th Foreman of Gang No. 5 was instructed by the Division Engineer to go to Ft. Smith, Arkansas on the Central Division to assist in washout work.

On June 13, 1943 the Foreman of Gang No. 5, now working temporarily on the Central Division, received instructions from the Division Engineer, Central Division, reading:

"Your hours this Division will be 12 midnight to 12 noon. Notify your men. Answer. E-829."

In compliance with that instruction B. & B. Foreman Set Duncan and members of his crew worked from 12:00 o'clock midnight until 12:00 noon with thirty minutes off for lunch between 7:30 A. M. and 8:00 A. M. on each day during the period June 13th to July 10, 1943.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: As stated in Employees' Statement of Facts, the B. & B. gang in charge of Seth Duncan, known as Gang No. 5, is a regular Western Division B. & B. gang. Their assigned hours on their home Division were from 8:00 A. M. to 12:00 noon and from 1:00 P. M. to 5:00 P. M. On June 11, 1943 this gang was instructed by the Division Engineer to proceed to Fort Smith, Arkansas on the Central Division to assist in re-

the hours 12:00 midnight to 12:00 noon became the regular assigned hours of the men in this gang. There is no rule that requires maintaining the same assigned hours eternally or for any set period of time. This exact situation prevailed in case covered by Award 2172. The fact that the gang was moved from the Western to the Central Division in no way affects the right of the Carrier to change the assigned hours.

In letter September 17, 1943, the General Chairman attempts to support his position by reference to payments made to the employees in 1935, 1937 and 1941. Such instances have no bearing on proper application of the Rule. Any payments made in these instances were not the subject of dispute and were not agreed to between the representative of the Organization and the representative of the Railway authorized to make official interpretations of the Agreement. Further, investigation shows definitely the hours of assignment of the employees involved were not changed in accordance with Rule 19 of the Agreement. There are other instances where employees were paid exactly as in the case in question; specifically bridge gangs used to repair washout damage at South Canadian River Bridge 557.9, in 1941. In that instance bridge gangs were worked over a 24-hour period, part of the men working from 12:00 noon to midnight and part from midnight to 12:00 noon. The men were paid 10 hours at pro rata rate, and time and one-half for time worked in excess of 10 hours.

In letter September 17, 1943, General Chairman refers to Rule 31 of Article V. This Rule has no application in this case. Rule 31 covers travel time and applies to men who leave their home stations. It specifically provides it does not apply as provided in Rule 24. Rule 24 covers employees required to travel on or off their assigned territory in boarding cars. Boarding cars are the home station, and in this instance the employees were in their boarding cars the entire period covered by the claim.

In letter January 29, 1944, General Chairman again takes the position Rule 19 only permits changing hours of employees between 6:00 A. M. and 8:00 A. M. We deny this is true, and this contention is in no way supported by the Rules. In this letter it is stated employees in B. & B. Department work single shifts. Ordinarily, this is true. In this specific instance, however, the employees were not working single shifts. There were two shifts assigned to protect the 24-hour period. Further, even if they were working single shifts, Rule 17 permits assignment of hours varying from those fixed for the general force "for operations necessitating," and for hours of work to be assigned in accordance with the requirements.

In accordance with our position as herein stated, we feel this claim is entirely without merit and it should be denied.

OPINION OF BOARD: The crew in question was regularly located on the Western Division with assigned hours from 8:00 A. M. to 5:00 P. M. with one hour for lunch. On account of a washout on the Central Division, this crew was transferred to that Division. While enroute to the Central Division, a wire was sent to the foreman on June 12, 1943, at 8:50 A. M. stating that "your hours will be from 12:00 midnight to 12:00 noon." This crew worked those hours on the Central Division from midnight June 13, 1943, to July 10, 1943. The crews of the Central Division and other Divisions worked from 12:00 noon to 12:00 midnight. The crew was compensated at a pro rata rate for the first ten hours' service and at time and one-half for the other two hours on each day's assignment in accordance with Rules 1 and 7 of Article 5 of the Agreement.

The employees contend that the carrier had no right to make the change in the assigned hours and this crew should be compensated at the rate of time and one-half for the service performed between 12:00 o'clock midnight and 8:00 A. M. each day. Both parties to this dispute agree that the work performed by this crew was emergency work.

The rules involved in this dispute are 1, 7, 14, 17, 19, 35, and 36, of Article V, of the current Agreement, and they are as follows:

"Rule 1. Except as otherwise provided in these rules eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

"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 14. Employees working single shifts, regularly assigned exclusively to day service, will start work period between 6:00 A. M. and 8:00 A. M."

"Rule 17. For operations necessitating working period varying from those fixed for the general force as per Rules 14, 15 and 16, the hours of work will be assigned in accordance with the requirements."

"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 35. Except for temporary service employees will not be transferred to another division unless they so desire."

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

The employees rely upon Rules 1, 7, 14, 35 and 36 to sustain this claim while the carrier contends that Rules 17 and 19 give it the right to change this crew's assigned hours.

When we consider that this was emergency work and it was necessary to work the 24 hours each day to make the repairs caused by the washout, we believe that the carrier did not violate the agreement. "For operations necessitating working" 24 hours each day, the carrier had a right to change the assigned hours of this crew after it gave 36 hours' notice under Rule 19. This was emergency and not temporary service, as contemplated by Rule 35 and that rule does not apply. Under the facts in this record, this crew's assignment was not made "to avoid the application of overtime rules."

We think the record demonstrates that the carrier did not violate the current 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 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 7th day of December, 1944.