

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
READING COMPANY**

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

(a) That Section Laborer Giovanni Lombardi was incorrectly paid for the period February 27 to April 17, 1942, inclusive, except Sundays; and

(b) That Lombardi be paid, as provided in Rule 29, in addition to what he received, at the rate of time and one-half for hours held on duty in excess of eight on the dates involved in this claim, exclusive of meal period.

JOINT STATEMENT OF FACTS: Giovanni Lombardi was regularly assigned as section laborer at Modena, Pennsylvania with a regular tour of duty from 8:00 A. M. to 4:30 P. M. prior to April 1, 1942 and from 7:00 A. M. to 3:30 P. M. after April 1, 1942, daily except Sundays and holidays.

On February 27, 1942, Lombardi was required and instructed to fill, temporarily, the position of a regularly assigned crossing watchman at Modena, Pennsylvania; tour of duty from 7:30 A. M. to 9:00 A. M.; 11:00 A. M. to 1:00 P. M.; and 3:00 P. M. to 7:30 P. M., daily except Sundays and was continued on this assignment to and including April 17, 1942.

For a spread of 12 hours from 7:30 A. M. to 7:30 P. M. the claimant received eight hours' pay daily at track laborers' rate of pay, 58 cents per hour.

There is in evidence: "Agreement between Reading Company and Brotherhood of Maintenance of Way Employees, effective January 15, 1936."

POSITION OF EMPLOYES: Rules of Agreement between the Reading Company and the Brotherhood of Maintenance of Way Employees, effective January 15, 1936, that are pertinent and governing in this claim are Rule 25 and Rule 29. These rules read:

"Rule 25. Except as otherwise provided in these rules eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work."

"Rule 29. Except as otherwise provided in these rules, time worked in advance or following and continuous with the regular eight-hour work period shall be paid for at the rate of time and one-half time computed on the actual minute basis. Employees required to work continuously from one regular work period into another in an emergency, shall receive time and one-half rate after the expiration of the first regular work period until relieved from such emergency work and pro rata rate for the remainder of time worked during the regular assigned work period."

An employe working on more than one class of work four (4) hours or more on any day will be allowed the higher rate of pay for the entire day."

It is the Carrier's position that section laborers and crossing watchmen are both within the scope of and covered by the Agreement between the Carrier and the Brotherhood of Maintenance of Way Employes, and Rule 46 of that Agreement clearly contemplates that employes subject to the scope thereof may be required to fill the place of another employe and further provides if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed, which protects the employe required to fill a position as crossing watchman from receiving a rate lower than that of his regular position. In the instant case, Lombardi was paid his regular rate as section laborer 58¢ per hour, or \$4.64 a day while filling the temporary vacancy, which was considerably higher than the crossing watchman's rate of \$3.68 per day.

The only conditions under which time and one-half applies to Maintenance of Way Employes are those prescribed in Rules Nos. 28, 29, and 30, none of which conditions are involved in the present case and, further, Rule 46 only applies to the "rate," hourly or daily and not to working conditions or with respect to other applicable rules and was complied with; therefore, the Carrier holds that there is nothing in the rules requiring payment to Lombardi on the basis claimed, and in the absence of extra crossing watchmen when section laborers are assigned to take the place of watchmen, they take the conditions of the position as to hours and overtime payments but their hourly rate for the hours worked cannot be less than the regular section laborers' rates under the rules cited above.

Under the circumstances set forth herein, the Carrier holds that Lombardi has been properly paid and that there has been no violation of any rules of the effective Agreement, therefore, the claim is without merit or justification and Carrier requests the Board to so find and deny the claim.

OPINION OF BOARD: This is a Joint Submission. The rules alleged to be involved are quoted therein and will be referred to in this opinion in the main by number only.

Giovanni Lombardi was a regularly assigned Section Laborer with eight consecutive hours exclusive of a 30-minute meal period as his tour of duty. His hours prior to April 1, 1942 were from 8:00 A. M. to 4:00 P. M., and from April 1, from 7:00 A. M. to 3:00 P. M. Due to illness of its regular incumbent he was directed by the Management to, and did, fill the position of the regularly assigned Crossing Watchman at Modena, Pennsylvania, temporarily from February 27, 1942, to April 17, 1942, inclusive. His hours of duty while occupying this temporary position were 7:30 A. M. to 9:00 A. M., 11:00 A. M. to 1:00 P. M., and 3:00 P. M. to 7:30 P. M. He was paid for this irregular service at his regular section laborer's rate of pay of \$4.64 per day in lieu of the Crossing Watchman's pay, which was \$3.68 per day. He claims overtime for all service rendered in excess of the eight hours each day he would have been required to start and end his tour of duty on his regular assignment if he had been permitted to carry on his work in that position.

Thus from facts related it appears Lombardi was required at the direction of the Management to leave his regularly assigned job as Section Laborer with a day's work of eight consecutive hours at what was apparently a desirable portion of the day in which to work and ordered to fill a position temporarily with time much less desirable and covering a 12-hour spread. The single issue is whether under the facts and circumstances as stated the rules of the current agreement permit the practice indulged in by the Carrier without payment of overtime.

The Claimant relies on Rules 25 and 29 as supporting his claim and requiring allowance of compensation as sought therein. If no other provisions of the Agreement limit their force and effect it becomes at once apparent from an examination of their terms and provisions the claim of Petitioner must be sustained. We turn, therefore, to consideration of other rules relied on by the Carrier as precluding that result. In passing, it should however be first noted that Rule 25 reads that unless otherwise provided eight (8) consecutive hours constitute a day's work, while Rule 29, in part, provides that, "Except as otherwise provided in these rules, time worked in advance or following and continuous with the regular eight-hour work period shall be paid for at the rate of time and one-half time. . . ."

The Carrier contends that the language to be found therein requires consideration of other rules in measuring the work of any claim, the circumstances of which make necessary consideration of Rule 25—and we add—Rule 29 as well. The point is well taken, subject of course to the limitation that other rules must be pertinent to the situation ascertainable from facts appearing in the record.

Rule 32 is first cited as precluding the payment of overtime. It is stated Rule 29 provides for exceptions to payment of punitive overtime, specific mention being made of Rule 32. That is true. The difficulty as we see it is that the rule relied on covers a definite group of employes and makes provision for their rate of pay, hours of work and other working conditions applicable to persons holding a regular assignment in that classification or group. We do not believe its language justifies an interpretation it applies to Section Laborers holding regular assignments who may happen to be temporarily assigned to do work on positions of the character herein mentioned.

Still another rule is urged as precluding the result sought in the claim. It is Rule 46, which reads:

"When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed."

It must be conceded on first blush the language just quoted seems broad and all-inclusive. However, it must be given a practical interpretation and viewed in the light of what the parties intended to accomplish by its terms. The Carrier's contention, if followed to its ultimate conclusion and adopted, would result in a decision by this Division to the effect that employes within the scope of the Agreement who possess regular assignments, irrespective of their group, their craft, or their classification, and without regard to the desirability of their tour of duty or other working conditions, may be shifted about from pillar to post, removed from their regular assignment at the discretion of the Management and assigned temporarily to others entirely dissimilar in nature, and while there, because of the existence of such rule and the broad language to be found therein, required to serve in that capacity at their regular rate of pay if the position paid a lower rate than that of their regular operation. We do not believe that is the meaning or intent of the rule and are not disposed to place that interpretation upon it. A more practical construction is that it contemplates the filling of a place by another employe in the same group, and has no reference to situations where employes are taken out of their regular assignments in that group and required by the Management to fill temporary positions in another.

Persuasive of the conclusion neither of the Rules cited by the Carrier limit payment of overtime as contended by it, although perhaps not determinative thereof, is another provision of the Contract not referred to by either party in their submission. Rule 41 reads:

"Where special work is done outside of regular work period and extra compensation agreed upon, overtime will not apply."

If as is clearly apparent from the language just quoted overtime does not apply to special work when the parties agree on compensation therefor, certainly the converse is contemplated, and the inference, that if work of the character referred to is performed outside of an employe's regular work period overtime will apply when compensation is not agreed on, does no violence to well accepted principles applicable to construction of contracts.

Since we have concluded Rules 32 and 46 have no applicability to the factual situation presented by the record it follows that under the requirements of Rules 25 and 29 of the current Agreement, Lombardi was entitled to be paid for overtime as set forth in his claim.

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 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 Section Laborer Giovanni Lombardi was incorrectly paid for the period February 27, to April 17, 1942, and should be compensated as provided in Rule 29 of the current Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1945.