

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI-KANSAS-TEXAS LINES**

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

1. That the Carrier violated Agreement in effect by requiring certain B. & B. men who were regularly assigned to daytime service to work from 4:00 P. M. to 2:00 A. M. at pro rata rate in the performance of painting at Bellmead, Texas, during the period from January 23rd to June 30th, 1943 inclusive;

2. That the employees involved and who were required to work irregular hours from 4:00 P. M. to 2:00 A. M. shall be paid the difference between what they received at pro rata rate and that which they should have received at time and one-half rate for all time so worked during the period in question.

EMPLOYEES' STATEMENT OF FACTS: The floating house and bridge gang in charge of B. & B. Foreman S. Carnes was assigned to regular day service under Circular 451, and supplement No. 1 thereto, dated October 6, 1942, with a starting time between 6:00 A. M. and 9:00 A. M. as contemplated under and in accordance with the second sentence of Article 6, paragraph (g), of Agreement in effect.

On or about January 27, 1943 this B. & B. gang without the formality of bulletin was instructed to make certain repairs and painting of the interior of the Bellmead back shop and to begin its tour of duty at 4:00 P. M. and end it at 2:00 A. M. This arrangement continued from about January 27th until July 1, 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: Article 6, paragraph (g), of Agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employees reads:

"ARTICLE 6. (g) The starting time of the work performed for regular assigned service shall be designated by the supervisory officer and shall not be changed without first giving the employees affected twenty-four (24) hours notice. Employees working single shifts, regularly assigned exclusively to day service, will start work period between 6:00 A. M. and 9:00 A. M. Employees working single shifts, regularly assigned to part day and part night service, will start work between 3:00 P. M. and 6:00 P. M. Employees working single shifts, regularly assigned to exclusively night service, will start work period between

what is loosely called, the daytime period. There are many kinds of railroad work the nature of which requires regularly assigned (permanent and temporary) tours of duty at nighttime period only; or overlapping the day and night period; sometimes continuously for the 24-hour cycle; sometimes not continuous. The Maintenance of Way Agreement here is not unique in recognizing and providing, as it does, for flexibility in designating regular work periods. The flexibility provided for stands out in relief against the recognition of and specific agreement concerning single jobs where the regular work periods are definitely restricted by a specific designation for day service, part day and part night, and for night service; whereas, when gangs or groups are designated to and do work regularly and the operations necessitate working period "varying from those fixed for the general force" the hours of work it is clearly agreed shall be "in accordance with the requirements."

The men involved in this claim did not work "irregular hours" as stated in the claim. They worked regularly, daily, the work period properly designated by the supervisory officer; they were given the agreed to notice of the work period and of changes therein; they were not **arbitrarily** designated to work these tours of duty, different from that customarily worked by the major part of the forces; but were so worked because the necessity of not interfering with a large body of daytime locomotive repair forces, required the variance, and for a substantial period of time, from the predominantly prevailing designated work periods.

To say that the men here involved worked "irregular" hours as Section 2 of the claim does, is to attach a meaning to the word "regular" which, as legitimately related to railroad operations, practices and working agreements, is strained to the last degree; and which does not meet that common-sense rule applicable alike in law and in equity that, in the interpretation and construction of contracts, words and phrases must be given their usual and customary meanings, in the context in which they are used and found.

Except as herein expressly admitted, the carrier denies the allegations of the employees and respectfully requests that the petitioner be placed on strict proof of his allegations.

The carrier respectfully requests that the Board deny the claim.

OPINION OF BOARD: The Claimants constituted the members of a regularly assigned B. & B. floating crew, located at Bellmead (Waco), Texas. Said crew had, prior to the period in controversy, an established starting time between 6:00 A. M. and 9:00 A. M., the exact hour being undisclosed by the record. On January 23, 1943, the Carrier's supervisory officer, after having given 24 hours notice of his intention, changed the Claimants' work period to begin at 4:00 P. M. and end at 2:00 A. M., and this practice continued until June 30, following. The Carrier says that this change was necessary to avoid interference with other workmen, by reason of the fact that Claimants were engaged in painting the interior of a shop where important locomotive repair work was being carried on during the daytime.

The Petitioner says that by shifting the Claimants from day service to part day and part night duty, without re-bulletining their positions, the Carrier violated Article 6-(g) of the effective Agreement of February 1, 1928. It is asserted that day shifts ordinarily prevail in the Maintenance of Way department, and that if employees so engaged may be arbitrarily ordered to work during night hours they may be required to perform service for which they would have declined to bid; and that the practice here indulged, if permitted, would be calculated to destroy the employees' vested seniority rights guaranteed by the Agreement.

The Carrier urges, on the other hand, that the shifting of the hours of the members of the Claimant crew was justified by the necessity of avoiding interference with the locomotive repairmen; that Rule 6-(g) recognizes that it may be proper to vary working hours under such circumstances; and that

said Rule does not contemplate that working hours shall be fixed or protected by bulletining, but leaves the designation and changing of such hours to supervisory officials, within certain limitations and upon due notice. It is concluded by the Carrier that since Claimants were transferred to part day and part night service by order of said official, after notice, and their starting time was fixed between the 3:00 P. M. and 6:00 P. M. range, as prescribed by the third sentence of said Rule, there was no violation of the Agreement.

We quote Rule 6-(g) in its entirety:

"The starting time of the work performed for regular assigned service shall be designated by the supervisory officer and shall not be changed without first giving the employees affected twenty-four (24) hours notice. Employees working single shifts, regularly assigned exclusively to day service, will start work period between 6:00 A. M. and 9:00 A. M. Employees working single shifts, regularly assigned to part day and part night service, will start work between 3:00 P. M. and 6:00 P. M. Employees working single shifts, regularly assigned to exclusively night service will start work period between 6:00 P. M. and 10:00 P. M. For regular operations necessitating working period varying from those fixed for the general force, the hours of work will be assigned in accordance with the requirements."

To sustain the claim we would have to find some basis for construing the Agreement to mean that when day service is expected of Maintenance of Way Employees the bulletin may be silent as to the starting time; but that when night duty, or part day and part night work is contemplated, that fact must be indicated on the bulletin. We find nothing in the Agreement that would justify us in engrafting such terms upon it, wholesome as these might be. On the contrary, we think it clear that this was not intended, inasmuch as Rule 6-(g) specified that starting time "for regular assigned service shall be designated by the supervisory officer," within certain enumerated limitations. This indicates to our minds that it was assumed by the parties to the Agreement that the rights conferred upon supervisory officers might be exercised subsequent to an assignment under a bulletin. That being true, the Carrier's action was not in violation of the Agreement.

So far as we are advised, this case presents a question of first impression as to the precise meaning of the Rule here before us, but our conclusion is, in some measure, supported by Awards 2714 and 2172.

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 28th day of February, 1945.