

Award No. 3153

Docket No. MW-3136

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE DELAWARE AND HUDSON RAILROAD
CORPORATION**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that under the application of Rule 17(a) of Agreement in effect, Trackman Mark Killam, Section 3-B, Pennsylvania Division, be paid the difference between what he did receive at straight time rate and that which he should have received at time and one-half rate for work performed between the hours of 7:00 A. M. and 3:30 P. M., September 14, 1944.

EMPLOYES' STATEMENT OF FACTS: At approximately 2:30 P. M., September 13, 1944 a wreck occurred near Thompson Station, Pennsylvania Division. Section Gang No. 3-B in which Mark Killam was employed was required to assist in repairing track and cleaning up after this wreck and worked on this job until about midnight. Within thirty minutes after being released Mark Killam was notified to return for further service, protecting a road crossing. He remained working on this road crossing until about 7:00 A. M. when he joined the section gang which continued in the work of cleaning up and repairing track damaged by the wreck and worked until 3:30 P. M., September 14th.

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

POSITION OF EMPLOYES: Rule 17 (a) of Agreement in effect between The Delaware and Hudson Railroad Corporation and the Brotherhood of Maintenance of Way Employees reads:

"Rule 17. (a) Time worked following and continuous with the regular eight hour work period shall be paid for at the rate of time and one-half 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 after the expiration of the regular work period until relieved from such emergency work, and pro rata for the remainder of the time worked during the regular work period."

As will be observed, this rule provides that where an employe is required to work continuously from one regular work period into another in an emergency, he shall receive payment at the rate of time and one-half after the expiration of the regular work period until relieved from such emergency work. That, of course, means that where an employe, as in the case of the

man Killam was properly paid at straight time rate for service during the regular assigned hours September 14th in accordance with that part of Rule 17(a) providing for payment of pro rata rate during regular hours after relieved from emergency work.

Trackman Killam's gang was relieved from emergency work at midnight September 13th and no claim has been presented for members of such gang, other than Killam, for overtime rate for service during regular hours September 14th. The Carrier contends that Trackman Killam was likewise released from emergency work at midnight September 13, 1944 and that he has been properly paid a pro rata rate for service during his regular hours September 14, 1944.

OPINION OF BOARD: On September 13, 1944, at approximately 2:30 P.M., a train wreck occurred on double track territory near Thompson Station on the Pennsylvania Division. The Section Gang of which Claimant was a member was required to assist in repairing track and cleaning up after the wreck until midnight. Claimant was thereupon held in service to protect a road crossing until 7:00 A.M., at which time he rejoined his gang and continued with the work of repairing and cleaning up the track damaged by the wreck until 3:30 P.M. Claimant was paid at the pro rata rate to 3:30 P.M. on September 13th, the end of his regular assigned work day; at time and one-half rate to 7:00 A.M. on September 14th; and at the pro rata rate to 3:30 P.M. on September 14th. The claim is for the time and one-half rate instead of the pro rata rate from 7:00 A.M. to 3:30 P.M. on September 14, 1944, under Rule 17(a) of the current Agreement which is as follows:

"Time worked following and continuous with the regular eight hour work period shall be paid for at the rate of time and one-half on the actual minute basis. Employes required to work continuously from one regular work period into another in an emergency, shall receive time and one-half after the expiration of the regular work period until relieved from such emergency work, and pro rata for the remainder of the time worked during the regular work period."

That claimant, together with his regular gang, were engaged in emergency work until the gang was released at midnight on September 13th is conceded by both parties. Claimant thereafter was required to protect a crossing from midnight, September 13 to 7:00 A.M., September 14th, during which time one track has been opened for traffic and was carrying traffic moving in both directions. We think that Claimant was still performing emergency work during this period. The Organization then states and the Carrier does not deny, that Claimant rejoined his gang at 7:00 A.M. and continued, until 3:30 P.M. on September 14th, to work at repairing and cleaning up track damaged by the wreck. It is evident, therefore, that Claimant continued to perform work brought about by the wreck. The normal condition had not been restored and this is our opinion makes it emergency work within the meaning of the rule. The Carrier could have relieved Claimant for a rest period as it did the balance of his gang at midnight on September 13th. This, it did not do. The burden would then have been on Claimant to elect whether he would continue to work his regular assigned hours at the pro rata rate or to take the rest period. For aught this record shows, the Claimant was held for service on emergency work which he performed from 3:30 P.M. on September 13th to 3:30 P.M. on September 14th. He is therefore entitled to time and one-half for the whole of that period under Rule 17(a).

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 Agreement was violated as alleged.

AWARD

Claim Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of March, 1946.