

Award No. 3181

Docket No. SG-3031

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Sidney St. F. Thaxter, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA**

**THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of G. A. Clouse, signalman, Aspinwall, Pennsylvania, for compensation for a minimum call, two hours and forty minutes, at time and one-half rate of pay, in lieu of compensation allowed by the Carrier (one hour and forty-five minutes at the time and one-half rate) for a call for emergency service on November 10, 1943. Actual amount of compensation claimed is \$1.39.

**EMPLOYES' STATEMENT OF FACTS:** Mr. G. A. Clouse is a regular assigned signalman with headquarters at Aspinwall, Pennsylvania. His assigned hours are from 7:30 a.m. to 4:00 p.m. with thirty minutes for lunch.

At 5:45 a.m. November 10, 1943, Signalman Clouse was called to repair a damaged switch at Millvale, Pa. For the service performed from 5:45 a.m. to 7:30 a.m., the Carrier compensated Mr. Clouse at the rate of time and one-half for the one hour and forty-five minutes.

There is an agreement in effect between the parties to this dispute effective June 1, 1943.

**POSITION OF EMPLOYES:** It is the position of the Brotherhood that the Carrier violated the provisions of Article 2, Section 9 of the current agreement in effect between the parties when it declined to compensate Mr. Clouse for a minimum call of two hours and forty minutes at the time and one-half rate for the service performed on November 10, 1943, when he was called to perform service at 5:30 a.m. that day. Article 2, Section 9 is here quoted:

"(a) Employees notified or called to perform service outside of and not continuous with the regularly assigned working hours shall report for duty with reasonable promptness and shall be paid a minimum of two hours and forty minutes at the rate of time and one-half. If held on duty longer than two hours and forty minutes, they shall be paid at the rate of time and one-half on the actual minute basis.

"(b) The time of employees so notified to report at a designated time to perform service outside of and not continuous with the regularly assigned working hours shall begin at the time required to report and end when released. The time of employees so called to perform such service immediately shall begin at the time called and end when they return to their headquarters."

out above there is nothing in Section 8 (b) which gives any support to such a contention. From the language of the rule it is apparent that the parties intended that such overtime could be either in advance of or following the work period, the only condition stated being that such overtime must be continuous with the regular work period.

The Carrier submits, therefore, that the claim in the instant case is not supported by Section 9 of the Agreement, but that Section 8 (b) clearly provides the compensation to which he is entitled on account of reporting in advance of his assigned working hours, and working continuously there-with, and since he has been so paid he is not entitled to any additional compensation.

**III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, Is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.**

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3 (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the employe in this case would require the Board to disregard the agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

**CONCLUSION**

The Carrier has established that under the applicable Agreement the Claimant was properly compensated for the service which he performed between 5:45 A.M. and 7:30 A.M., November 10, 1943, which was outside of and continuous with his assigned tour of duty, and that he is not entitled to the additional compensation claimed.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the employe in this matter.

**OPINION OF BOARD:** The problem here involved is not easy of solution. In the first place the rules with which we are dealing lack clarity. In the second place the construction placed on the salient language has not been uniform. The awards and decisions are in conflict. There is no such uniformity as suggests to us the advisability, for the sake of certainty, of adopting any one particular view. On the contrary we are free to adopt that construction which seems to us to carry out the purpose which the parties had in mind in making the agreement which became effective June 1, 1943. The rules with which we are concerned read as follows:

**ARTICLE 2—Section 8.**

"(b) An hourly rated employee shall be paid on the actual minute basis at the rate of time and one-half for service performed outside of and continuous with his assigned tour of duty; compensation for service performed outside of and not continuous with his assigned tour of duty shall be paid for in accordance with Section 9 of this Article."

**ARTICLE 2—Section 9.**

"(a) Employees notified or called to perform service outside of and not continuous with the regularly assigned working hours shall

report for duty with reasonable promptness and shall be paid a minimum of two hours and forty minutes at the rate of time and one-half. If held on duty longer than two hours and forty minutes, they shall be paid at the rate of time and one-half on the actual minute basis.

(b) The time of employees so notified to report at a designated time to perform service outside of and not continuous with the regularly assigned working hours shall begin at the time required to report and end when released. The time of employees so called to perform such service immediately shall begin at the time called and end when they return to their headquarters."

The claimant, whose regular, established working hours were from 7:30 A.M. to 4:00 P.M., was called at 5:45 A.M. on November 10, 1943, to repair damage to a switch. That work was not completed until after the start of his regular work period. He was paid by the carrier under Rule 8(b) at the rate of time and a half until 7:30 A.M. and thereafter at straight time for his regular work period.

He claims that he should have been paid under Section 9(a) a minimum of two hours and forty minutes at time and a half, on the ground that work performed prior to the regularly assigned working hours cannot be regarded as continuous with regularly assigned working hours. It is only, he contends, work which follows the regular hours without any interval which can be so regarded. The carrier's contention is that it makes no difference whether the extra work period comes before or after so long as no time intervenes between the two.

Award 2461, although the rule discussed is not identical with the one before us, seems to hold that it makes no difference whether the work is performed after the regular day's work is done or before it begins. But we are satisfied that the agreement in question here recognizes such a distinction. Decision No. 2012 of the United States Railroad Labor Board lays down the rule that service performed prior to the regular starting time cannot be regarded as continuous with regular working hours. That decision had not been questioned in twenty years and was well known to the parties when they adopted the language of Rule 9(a). That language was used in the light of the construction which had been given to it. As a matter of fact there was inherent in the rule of the preceding agreement a recognition that work performed prior to the beginning of the work period was not to be regarded as continuous with it. Section 9(a) and (b) is substantially the same so far as this problem goes as the same two paragraphs in the old rule, which, however, had a third most significant provision reading as follows:

"An employee so called less than two hours before his regular starting time will be paid at time and one-half time until his regular starting time, and thereafter at straight time for the regular hours."

An employee "so called" can refer only to an employee notified or called to perform work "outside of and not continuous with regular working hours" and the provision is based on the assumption that such work is not continuous with regular working hours even though it may continue to the regular starting time.

We hold that this problem is settled by the interpretation which the parties themselves have placed on the language of the rule and that work commencing prior to the regular starting time is not continuous with regularly assigned working hours.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 claim is sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 1st day of May, 1946.