

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Trackmen Antonio Camino and Guiseppe Raimondo and all other Trackmen who were assigned to crossing watchmen's positions in accordance with the provisions of agreed to interpretations of Rule 11-a of the current working agreement, be allowed the difference in pay between what they did receive at the straight time rate and what they should have received at the overtime rate for all such service performed in excess of their regular eight (8) hour assignment and for all time worked on such assignments on Sundays and holidays, subsequent to December 15, 1943.

EMPLOYEES' STATEMENT OF FACTS: On various occasions since December 17, 1943 Trackmen Antonio Camino, Guiseppe Raimondo, and other trackmen have been required to perform the service of crossing watchmen. In the performance of this service Antonio Camino, Guiseppe Raimondo, and these other trackmen have been paid at straight time rate for all services in excess of their regular eight hour assignment and for service on Sundays and holidays.

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

POSITION OF EMPLOYEES: Rule 11(a) of Agreement in effect between The Delaware and Hudson Railroad Corporation and the Brotherhood of Maintenance of Way Employes reads:

"Rule 11. (a) Employes temporarily transferred by direction of the Management, from one seniority division to another, or from one department to another, will retain their seniority rights on the division from which transferred. Except for temporary service, employes will not be transferred to another seniority division or to another department unless they so desire."

In that the Carrier was short of crossing watchmen the following interpretation of Rule 11(a) was agreed upon between the Carrier and the Employes, effective as of November 15, 1943:

"It is mutually agreed that the Carrier, under this rule, may, if necessary, and if there is no crossing watchman available, transfer a trackman to a crossing watchman's position with the understanding that he will be allowed pay in accordance with the provisions of Rule 18.

It is mutually agreed that rule further permits the temporary transferral of a man with special or exceptional ability on the basis

"Rule 18. Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position their rate will not be changed."

The Carrier contends this rule only provides for payment of higher rate while working a lower rated position. The Trackmen concerned in the case at issue were allowed their own rate which is higher than the Crossing Watchmen's rate.

It is the position of the Carrier that payment of straight time for service as Crossing Watchmen as covered by this claim is in accordance with the Rule of Agreement covering Maintenance of Way Employees and Carrier respectfully requests claim be denied.

OPINION OF BOARD: The employees making this claim are trackmen. They were transferred temporarily to and performed the duties of crossing watchman for periods in excess of eight hours per day. They were paid at the pro rata rate for all hours worked. The claim is for time and one-half for the hours worked in excess of eight and for time worked on Sundays and holidays. The employees contend that this claim is controlled by Rule 11(a) and the agreed to interpretation, and by Rule 18, all set out in the submission.

The Carrier contends that the claim is controlled by Rule 17(c), likewise set out in the submission. As to Rule 17(c) the argument resolves as to the meaning of the clause in the rule, "or those who may be assigned in their place". The employees contend that the phrase is limited to employees in the same classification and not to employees in an entirely different classification, such as trackmen. We need not determine that question. It is an established rule of construction that where there is a provision of a contract dealing with a specific situation, it controls over a general provision. Tested by this rule, it is apparent that the agreed to interpretation of Rule 11(a) controls. The interpretation is that the Carrier may "transfer a trackman to a crossing watchman's position with the understanding that he will be allowed pay in accordance with the provisions of Rule 18". There is the specific authority granted to the Carrier by which it may transfer a trackman to a watchman's position when the conditions named in the rule exist. The Carrier in turn agrees to pay a trackman so transferred in accordance with Rule 18. The watchman's position is a lower rated position. Rule 18 provides "if assigned to a lower rated position their rate will not be changed". The obvious purpose is to prevent the employee so transferred for the convenience of the Carrier from suffering a loss in earnings as a result of the transfer.

The Carrier concedes that for the first eight hour period it should pay the trackmen, so employed, at the trackman's rate. In short that there shall be no loss of earnings during that period. But as to the hours, more than eight, worked in any one day the Carrier says it should pay only the pro rata rate. But the trackman, if he works more than eight hours in one day as a trackman, is paid at time and one-half rate. It seems to us that to protect the trackman from a loss of earnings he must be paid for the hours in excess of eight at the time and a half rate. Any other application of the rule will not protect him as the rule intends. The same reasoning requires that he be paid at the rate of time and one-half for services performed on Sundays or holidays under the Sunday and holiday rule.

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 claim is sustained under the provisions and agreed to interpretation of Rule 11(a) and Rule 18.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1946.