

**Award No. 3369**

**Docket No. MW-3419**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Fred W. Messmore, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**MISSOURI PACIFIC RAILROAD COMPANY**

**(Guy A. Thompson, Trustee)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that subsequent to March 30, 1945, Bernie Hutton, water service repairman helper, Newport, Arkansas, shall be paid at time and one-half rate for services rendered as a pumper from 5:00 P. M. to 11:00 P. M. on Fridays of each week and from 11:00 P. M. to 7:00 A. M. shift on Saturdays of each week in addition to his regular monthly rate applicable to his position as water service repairman helper.

**JOINT STATEMENT OF FACTS:** Bernie Hutton is regularly assigned as a water service repairman helper under the application of Schedule Rule 17 (b), with headquarters at Newport, Arkansas, Arkansas Division, at a salary of \$180.05 per month.

Beginning March 30, 1945, Bernie Hutton was instructed to relieve regularly assigned pumpers during their day of rest from 3:00 P. M. to 11:00 P. M. on Fridays, and from 11:00 P. M. to 7:00 A. M. Saturday shifts of each week.

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

**POSITION OF EMPLOYES:** Bernie Hutton, the claimant, is regularly assigned as water service repairman helper at Newport, Arkansas, at the rate of \$180.05 per month, under the application of Schedule Rule 17 (b), reading:

**"INTERMITTENT SERVICE:** Rule 17 (b)—Water service foremen, repairmen and helpers, maintenance of way blacksmiths and helpers, and motor car repairmen and helpers, shall be paid hourly or monthly rates.

Where such positions are paid monthly rates, employees, assigned thereto shall have no designated hours of service assignment. However, in the absence of any service requirement making it necessary to deviate therefrom, they may work the hours customarily recognized as applicable to maintenance of way forces.

Positions paid monthly rates shall be in full compensation for all services performed."

As will be observed, Rule 17 (b) provides in part that employees assigned under its application shall either have no designated hours of service assign-

**OPINION OF BOARD:** This case is before the Board on a joint statement of facts as follows: Bernie Hutton was regularly assigned as a water service repairman helper, with headquarters at Newport, Arkansas, Arkansas Division, at a salary of \$180.05 per month. Beginning March 30, 1945, Bernie Hutton was instructed to relieve regularly assigned pumpers during their day of rest from 3:00 P. M. to 11:00 P. M. on Fridays, and from 11:00 P. M. to 7:00 A. M., Saturday shifts of each week. On the days in question when he relieved regularly assigned pumpers, he did not work on his regular assignment.

Rule 17 (b) provides:

"Water service foremen, repairmen and helpers, maintenance of way blacksmiths and helpers, and motor car repairmen and helpers, shall be paid hourly or monthly rates.

"Where such positions are paid monthly rates, employees assigned thereto shall have no designated hours of service assignment. However, in the absence of any service requirement making it necessary to deviate therefrom, they may work the hours customarily recognized as applicable to maintenance of way forces.

"Positions paid monthly rates shall be in full compensation for all services performed."

The Employees contend that upon the days, and the assigned hours, that Bernie Hutton was required to perform the work of a pumper, which is in another class of work and hours different from his assigned hours, he is entitled to be paid in conformity with Rule 14 (f-1), at the rate of time and one-half as provided for in the rule which is set out above. In support of this contention, the Employees cite Award 2775. The claim in that case was in behalf of a section laborer for time and one-half when the claimant was required and instructed to fill, temporarily, the position of a regularly assigned crossing watchman. The award sustained the claim that under the rules of the effective agreement therein presented, the assignment of the section laborer to another classification constituted a violation of the agreement by the carrier. This award had under consideration certain rules of the agreement, Rule 29 being somewhat analogous to Rule 14 (f-1). There does not appear any rule discussed in the case that is analogous to Rule 17 (b) of the agreement being considered in the instant case, nor Rule 14 (f-3), and the award is not directly in point.

The Claimant further contends that Rule 17 (b), as it applies to him, means that he has no regular hours of assignment insofar as the classification of water service repairman helper is concerned; that he is subject to call in any emergency in that class of work, and obligated to perform such work for his monthly rated pay.

In Rule 14 (f-3), designated "Hours of Service, Overtime and Calls", it is said:

"This rule shall not apply to water service repairmen and helpers, motor car repairmen and helpers and maintenance of way blacksmiths and helpers that are paid monthly rates in full compensation for all services performed under Rule 17 (b)."

Under the language of Rule 14 (f-3) the Claimant does not come within the provisions of Rule 14 (f-1) for overtime, because under Rule 14 (f-3) he is specifically designated as not being subject to Rule 14, and is paid a monthly salary in full compensation for all services performed under Rule 17 (b).

Under Rule 17 (b) the employees covered thereby are not limited to the performance of services in their own classification, and because of this, they have a protective rule known as a "Composite Service" rule, Number 28, as follows:

"An employe assigned to work on a higher rated position thirty (30) minutes or more, but less than one (1) hour, will be allowed the higher rate for the full hour, and thereafter will be paid the higher rate on the minute basis for the full time worked on the higher rated position."

The Claimant, although working on a lower rated position than held by him, is entitled, under the rules of the Agreement, to his regularly rated pay when the same is in full compensation for all services rendered, and he is not entitled to additional compensation under any other rule of the working Agreement.

**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 for the reasons given in this Opinion, the claim is denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1946.