

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY
Joseph B. Fleming and Aaron Colnon, Trustees

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Joe Schneider, section laborer, Topeka, Kansas, shall be paid the difference between what he received at pro rata rate and that which he should have received at time and one-half rate for all of the time that he was required to work nights, or during overtime hours, during the period from March 6th to May 5th, 1945, inclusive.

EMPLOYES' STATEMENT OF FACTS: Joe Schneider was regularly assigned as Section Laborer at Topeka, Kansas, working regularly assigned daytime hours from 8:00 a. m. to 5:00 p. m. with one hour off for lunch. On March 6, 1945 Joe Schneider was instructed to temporarily work nights in connection with an emergency resulting in damage to a curve oiler and in compliance with those instructions, worked nights outside of his regular daytime assignment from 8:00 p. m. to 5:00 a. m. from March 6th to May 5th, 1945, inclusive.

Agreement effective May 1, 1938 between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rules 24(a), 26, and 32 of agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employees read:

"OVERTIME

Rule 24(a). (Revised December 16, 1944)

Time worked preceding or following and continuous with the regular eight hour work period shall be computed on actual minute basis and paid for at time and one-half rate, with double time computed on actual minute basis after sixteen (16) continuous hours of work in any twenty-four (24) hour period computed from starting time of the employee's regular shift. Employees required to work continuously from one regular work period into another in an emergency shall receive time and one-half rate after the expiration of the first regular eight (8) hour work period with double time after sixteen (16) continuous hours of work in the twenty-four (24) hour period computed from starting time of employee's regular shift, and at the beginning of the next regular work period shall be paid at the rate of time and one-half with double time after

tain that for that overtime service, he was, in conformity with Rules 24(a) and 26, entitled to payment at the rate of time and one-half. We firmly believe that this claim is just and reasonable and respectfully request that it be allowed.

CARRIER'S STATEMENT OF FACTS: In March, 1945 a rail oiling machine in use at Topeka, Kansas, on the Missouri-Kansas Division needed repairs and it was therefore shopped. During the period it was undergoing repairs it was necessary to oil the rail by use of hand equipment. On March 6, 1945 Roadmaster Price asked section laborer Joe Schneider, Topeka, Kansas, if he wanted to perform this work of oiling rail at night. He indicated he did desire the work and he was therefore put thereon and at the same time advised his new assigned hours would be 8:00 p. m. to 5:00 a. m. during the period he would be on this work. Accordingly, until the expiration of the thirty-six hours' notice required by the provisions of Rule 32, he was paid the punitive or time and one-half rate and, thereafter, at pro-rata rate for hours of work on his new assignment.

POSITION OF CARRIER: Rule 32 reads:

"RULE 32. CHANGING STARTING TIME. Regular assignments will have a fixed starting time and the regular starting time will not be changed without at least thirty-six (36) hours notice to the employees affected, except as otherwise arranged between the employees and their immediate superior."

Mr. Schneider was paid at the time and one-half rate until expiration of the thirty-six (36) hour period provided in Rule 32. Therefore, it is the carrier's position that as we complied with Rule 32 in its entirety Mr. Schneider began working on a new regular assignment performing work included in section laborers' duties when he voluntarily accepted the work of oiling rail and, after expiration of the thirty-six (36) hours' notice, he was entitled only to the pro-rata rate for each eight hours worked on such new regular assignment 8:00 p. m. to 5:00 a. m.

We respectfully refer the Board to its Awards 2172, 2714, and 2826.

There is no rule in the agreement prohibiting the assignment of employees covered thereby to night work, nor any rule in the agreement specifying the hours during which such an employee must be assigned.

OPINION OF BOARD: Claimant is a section laborer with regular assigned hours of 8:00 a. m. to 5:00 p. m. For two months he worked oiling curve rails by hand, hours from 8:00 p. m. to 5:00 a. m., because the oiling machine had broken down and was being repaired.

He claims the punitive rate because the hours he was assigned to work oiling rails were outside his regular assigned hours as section laborer. He relies on Rule 26 which calls for the overtime rate when employees are notified or called to perform work outside of the regular work period.

Carrier's position is that Claimant was given a new regular assignment with changed starting time which only called for proper notice of the change under Rule 32.

We find no previous awards under identical rules. Awards relied on by Carrier all considered a rule which permitted varying fixed hours of work where operations made it necessary.

While Award 3055 considers a rule not contained in the agreement before us, still we believe its reasoning is applicable here. It appears to us that Claimant in this case was not given a new regular assignment with changed starting time but was specifically assigned to temporary work outside of his regular hours. Therefore Rule 32 does not govern this case. Cf. Awards 2973, 2775.

The claim must be sustained.

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 employe 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 violated the agreement.

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 March, 1947.