

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE 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 Section Laborer E. H. Quinn, El Reno, shall be paid at the rate of time and one-half for services rendered on Sundays and for services rendered during overtime hours on week days from 5:00 P.M. until 11:00 P.M. for each day that he worked during those hours relieving a crossing watchman from December 9 until December 21, 1945, inclusive.

EMPLOYES' STATEMENT OF FACTS: Prior to December 9, 1945, Mr. John Cronner was the regular assigned crossing watchman at El Reno, Oklahoma. His regular assignment as crossing watchman was from 3:00 P.M. to 11:00 P.M. Some time between 11:00 P.M. the night of December 8 and 2:00 P.M. December 9, 1945, Mr. Cronner suffered a stroke which necessitated the securing a man to relieve him and act as crossing watchman. There being no extra crossing watchman at El Reno, the Carrier called Mr. E. H. Quinn, section man, at 2:00 P.M. Sunday, December 9, 1945, and instructed him to report at 3:00 P.M. and protect crossing watchman's job. Mr. Quinn reported as instructed and protected the job until December 21, 1945, when he was relieved by the crossing watchman who had been appointed to fill the vacancy caused by Mr. Cronner's having to retire from the service of the Carrier account his physical condition. When Mr. Quinn was relieved he returned to his regular assigned position as section man with assigned hours from 8:00 A.M. to 12:00 noon, 1:00 P.M. to 5:00 P.M., six days per week.

For time worked as crossing watchman during the first thirty-six hours following his call at 2:00 P.M. Sunday, December 9, 1945, Quinn was paid at the time and one-half rate, but following the expiration of this thirty-six hour period he was paid at straight time rate for services performed as a crossing watchman.

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 1 of the effective agreement provides in part as follows:

"RULE 1. SCOPE. These rules will govern the hours of service and working conditions of all employees not including supervisory forces above the rank of foreman, performing work of a maintenance and construction character in maintenance of way department (not including signal, telegraph and telephone maintenance department, nor employees performing work of a clerical nature) and employees listed below:

CARRIER'S STATEMENT OF FACTS: E. H. Quinn, claimant in this docket, was regularly assigned as a section laborer at El Reno, Oklahoma, with a tour of duty from 8:00 A.M. to 12:00 noon and 1:00 P.M. to 5:00 P.M. Owing to illness of crossing flagman the claimant was given thirty-six hours notice as provided in Rule 32 that his hours of service would be changed to 3:00 P.M. to 11:00 P.M. and he would be used as a crossing flagman, effective December 9, 1945. He was paid for his service as crossing flagman at punitive rate for December 9, 10, 1945.

He continued working as crossing flagman to and including December 21, 1945.

POSITION OF CARRIER: An agreement between the Carrier and the employes of the Carrier represented by the petitioner bearing an effective date of May 1, 1938, is on file with your Board and is hereby made a part of this record.

For the ready reference of the Board Rule 32 of the aforementioned agreement is quoted below:

"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 employes affected, except as otherwise arranged between the employes and their immediate superior."

As stated in our Statement of Facts, the claimant in this docket was paid at the rate of time and one-half until the expiration of the thirty-six hour period after he was notified of his change in assigned hours provided in Rule 32. Thereafter he was compensated at section laborers' pro rata rate.

Nothing in the controlling agreement prohibits changing the assigned hours of the claimant as was done. Rule 32 of the controlling agreement is not confined to any group or class of maintenance of way employes but covers the entire scope of employes outlined in the agreement and it is the position of the Carrier that it may change the regularly assigned hours of any employe covered by this agreement by giving the required thirty-six hours' notice as provided in Rule 32. Inasmuch as the claimant in this docket did not receive the thirty-six hours' notice before his hours of service were changed, the Carrier compensated him at punitive rate for all services rendered within the thirty-six hour period following the time of the notice.

The Carrier urges that Award 2172 of your Board is controlling in this case. The rule (Rule 19) involved in the docket resulting in Award 2172 was similar to Rule 32 in this docket. We do not have a rule similar to Rule 36 which was involved in Award 2172. Award 3055 was not based upon a rule similar to Rule 32 in this docket. That fact was pointed out in the award which reads in part as follows:

"Awards 2826, 2714 and 2172, cited by the Carrier, appeared to have been decided under agreement having applicable rules that are not contained in the agreement between the party in the present case."

The foregoing statement is indicative of the fact that your Board has chosen to follow the precedent established by Award 2172 where similar rules are involved such as in the case here.

For the above reasons the Carrier respectfully petitions your Board to deny the claim of the employes.

OPINION OF BOARD: Claimant, a trackman, regularly employed with assigned hours of 8:00 A.M. to 12:00 noon, 1:00 P.M. to 5:00 P.M., six days per week, coming under the seniority group identified as Group No. 9, was called at 2:00 P.M. Sunday, December 9, 1945, and instructed by Carrier to report at 3:00 P.M. that date to protect a crossing watchman job, covered under seniority Group No. 12. He protected the crossing watchman job until

December 21, 1945, with hours of 3:00 P.M. to 11:00 P.M. For time worked during the first thirty-six hours as crossing watchman claimant was paid at the time and one-half rate. He claims like pay for all other time worked outside his regularly assigned hours.

Carrier claims that Rule 32 of the agreement, the changing starting time rule, governs, and, that since the thirty-six hours overtime required by that rule was paid it has complied with all the requirements of the agreement. Not so. Rule 32 deals with regular assignments. Under no circumstances can it be said that the protection of this watchman's job by claimant was a regular assignment. The most claimed for the assignment is that it was to meet an emergency caused by illness. Furthermore, the right to arbitrarily take an employe out of one seniority group without his consent and project him into another upon a permanent basis is not claimed by anyone. Yet that would have to be the case if Rule 32 applies.

The Scope Rule specifically provides for a separate and distinct classification for crossing watchmen.

Rule 24 (a) provides for overtime rate of pay for time worked preceding or following the regular eight-hour work period, and Rule 25 (a) provides for such rate of pay on Sundays and holidays. Those rules read:

"RULE 24. OVERTIME. (a) 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 employe's regular shift. Employes 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 employe'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 sixteen (16) continuous hours of work in the second or succeeding twenty-four (24) hour period until relieved from such emergency work. When relieved from such emergency work, pro rata or straight time rate will apply for time worked during regularly assigned work period."

"RULE 25. SUNDAY AND HOLIDAY SERVICE. (a) Except as otherwise provided in this rule, employes who are required to work on Sundays and the following holidays, namely: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided that when any of the above holidays fall on Sunday, the day observed by the state, Nation or by proclamation shall be considered the holiday) shall be compensated therefor at the rate of time and one-half."

Applying those rules we find that claimant was called away from his regular crew, outside his seniority group and placed on temporary work requiring six hours' time following and continuous with the eight hours of his regular assignment. Also, he was required to work Sundays, in contravention of his regular six-day assignment.

The claim supports an affirmative award.

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 Carrier violated the terms of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.